

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 3:30 p.m. on March 1, 2010, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Johnson - Excused
Representative Light - Excused
Representative Prescott - Excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

Mike Bodenhausen, Executive Director, Kansas Dairy Association
Constantine Cotsoradis, Deputy Secretary of Agriculture, Department of Agriculture
John Donley, Assistant General Counsel, Kansas Livestock Association
Jim Rankin, KAI-USA Ltd., and Kershaw Knives
Randol Walker, an individual
Kyle Smith, Legislative Chair, Kansas Peace Officers Association

Others attending:

See attached list.

Chairman Powell began the meeting with reappointment of the Subcommittee on **HB 2493**. Representative Fund will be the Chairman, and other members are Representatives Kerschen, Light, Maloney and Wetta.

Chairman Powell then opened the hearing on **SB 395** - Changes to dairy, milk and milk product statutes, requesting Raney Gilliland, Kansas Legislative Research Department, to give an explanation of the bill.

Mr. Gilliland stated this bill would make various amendments to provisions of the law administered by the Kansas Department of Agriculture, specifically those which regulate and inspect dairy, milk and milk products in the state of Kansas. This bill would add new definitions for the terms "bulk milk pick up tanker", "milk plant", "milk tank truck", "milk tank truck cleaning facility", "milk transport tank," and "milk transportation company", as well as add new requirements for license and inspection fees.

Hearing on SB 395:

PROPONENTS:

Mike Bodenhausen, Executive Director, Kansas Dairy Association, testified in favor of **SB 395** (Attachment 1), advising without an effective Dairy Inspection Program, it would not be possible to sell and ship Grade "A" milk across state lines, and since Kansas uses only about 20% of the milk that is produced within the state, it is a must that a program is maintained that meets or exceeds the requirements of the International Milk Shippers Agreement and Pasteurized Milk Ordinance (PMO). Mr. Bodenhausen further stated that while the Kansas Dairy Association supports the majority of this bill, they request the Committee to reconsider the new fee proposal of \$100 for the inspection tanker trucks and feel a \$25 per tanker truck fee would be fair which is in line with the fee for the same inspection if performed in Nebraska.

Constantine Cotsoradis, Deputy Secretary of Agriculture, Department of Agriculture (KDA), spoke in favor of **SB 395** (Attachment 2), stating the Dairy Inspection Program serves two main purposes; one, to provide consumer protection and confidence that milk is safe and wholesome; and two, to provide inspections as specified in the interstate milk shippers' agreement. Mr. Cotsoradis further advised KDA understands the reality of seeking a fee increase at this time, but without additional funds, the dairy inspection program likely will be unfunded in 2012 and the dairy industry then may not be able to ship their milk across state lines.

CONTINUATION SHEET

Minutes of the House Agriculture and Natural Resources Committee at 3:30 p.m. on March 1, 2010, in Room 783 of the Docking State Office Building.

John Donley, Assistant General Counsel, Kansas Livestock Association (KLA), appeared as a proponent for **SB 395** (Attachment 3), stating last year, KLA opposed a House bill that would have increased the fees to fund the KDA's Dairy Program. KLA had two main concerns with the proposal; one, they felt the KDA could still find efficiencies within the program and a fee increase was not necessary, and two, the fee schedule proposed last year would have had a more direct impact on dairy producers in Kansas. Mr. Donley further explained that in order to become more efficient, the KDA has gone to a performance based inspection schedule as well as finding other internal efficiencies within the program. With regards to the second issue of the direct impact of the fee increase on dairy producers, KLA feels that the proposal in **SB 395** is more acceptable than last year's proposal because not as much of the burden to fund the Dairy Program will be placed on dairy producers.

George Blush, Dairy Commissioner, Kansas Department of Agriculture, also answered questions from members of the Committee, after which the hearing was closed on **SB 395**.

Chairman Powell then opened the hearing on **SB 497** - Excluding certain knives from the definition of a criminal weapon, requesting Raney Gilliland, Kansas Legislative Research Department, to give an explanation of the bill.

Mr. Gilliland explained **SB 497** amends a portion of Chapter 21 of the Criminal Statutes of the State of Kansas and specifically the definition of what the criminal use of weapons is knowingly, and would add clarifying language to existing law by explicitly exempting the lawful selling, manufacturing, purchasing, possessing, or carrying of certain pocket knives from prosecution under the criminal weapons use statutes.

Hearing on SB 497:

PROPONENTS:

Jim Rankin, KAI-USA Ltd., and Kershaw Knives, appeared as a proponent on **SB 497** (Attachment 4), testifying that the exception language in the bill is designed to be consistent with exceptions made in Texas and California law, as well as federal law. Mr. Rankin further introduced a proposal that introduces two new terms; detent, referring to that part of the knife mechanism which catches the knife blade open and keeps it closed, and bias, referring to the tendency of a switchblade to be "biased" toward open versus the tendency of an assisted opening knife blade to be biased toward closed. Mr. Rankin feels such terms direct the judiciary and law enforcement to a more specific and limiting descriptive provision for use when testing applicability of the proposed exception.

Randol Walker, an individual, spoke in favor of **SB 497** (Attachment 5), stating the design features of these knives have proven useful for cleaning fish, field-dressing game birds and deer as well as many other cutting chores involved with these pursuits. Mr. Walker further advised his observation of other farmers, fishermen and hunters indicates he is not alone nor unique in the use of this handy tool in day-to-day work.

OPPONENTS:

Kyle Smith, Legislative Chair, Kansas Peace Officers Association (KPOA), appeared in opposition of **SB 497** (Attachment 6), advising the KPOA is not opposed to the legal status of the knives that have been described, but to the unnecessary change in the statute proposed in the bill. Mr. Smith advised their gravest concern is with the changes to subsection (a)(2) which makes it clear these knives cannot be determined to be a "dangerous knife" under any circumstances. This language change will mean these knives will be exempt by statute from such findings regardless of how the knife is used or intended to be used.

Written Testimony:

Marc Goodman, Lyon County Attorney, Kansas County and District Attorneys Association Board Member (Attachment 7).

After questions were asked by members of the Committee, the hearing was closed on **SB 497**.

The next meeting is scheduled for March 2, 2010.

The meeting was adjourned at 4:55 p.m.

Testimony

To: House Agriculture and Natural Resources Committee
Representative Larry Powell, Chairman

From: Mike Bodenhausen, Executive Director, Kansas Dairy Association

Date: March 1, 2010

Re: SB 395 – Dairy Inspection Fees

My name is Mike Bodenhausen, and I am the Executive Director of the Kansas Dairy Association. I want to thank you for this opportunity to provide testimony in support of SB 395.

Having been in the dairy business myself for over 40 years, I fully understand the importance of a good Dairy Inspection Program. Without an effective program, we would not be able to sell and ship Grade A milk across state lines. Since Kansas only uses about 20% of the milk that is produced within the state, it is a must that we maintain a program that meets or exceeds the requirements of the International Milk Shippers Agreement and the Pasteurized Milk Ordinance (PMO).

Last summer the Department of Agriculture began discussions with various stakeholder groups within the state on the fate and future of the Dairy Inspection Program. It was very evident the program was in need of financial support. Our first response and request to the Department was to carefully scan the program for inefficiencies. Our second request was to begin looking at a Performance-Based Inspection Program. This program allows more flexibility to the number of inspections and is based on performance of past inspections. Yet this system allows the Dairy Inspection Program to meet the necessary standards and requirements needed to meet the PMO.

The Department met both of these requests. One Dairy Inspector position was eliminated and a Performance-Based Inspection Program was successfully implemented. This, however, did not meet all the financial needs and goals of the program. Thus we began discussing fee increases. Now let me be very candid—we probably would not have had to go down this road had we continued to receive our share of State General Funds. But since we understand the current budgetary situation of the state, we felt we would try to our part in helping to fund this important program. The Department proposed a ½ cent per hundred weight fee increase on milk that was handled through the distributors and processors as well as small increases in fees to inspect washing stations. (This actually only amounts to about .04 cents per gallon.). It was the Department's opinion that this would help meet their financial needs.

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Attachment 1

While we do support the majority of this bill, we would like this committee to reconsider the new fee proposal of \$100 for the inspection tanker trucks(Section 4, (h), pg 8). In the past, there has been no charge for this, but we feel a \$25 per tanker truck fee would be fair. This is in line with the fee for the same inspection if done in Nebraska.

We also would ask this committee to join us in seeking our fair share of State General Funds, if and whenever possible. We feel this program has been extremely effective and has provided Kansas consumers a safe and high quality product. To George Blush, Dairy Commissioner, we give this credit.

I want to express my sincerest appreciation to the Department of Ag staff for working with us on this issue. They have been very cooperative in our discussions and requests and have listened to our concerns and suggestions. Because of this and the importance of the Dairy Inspection Program to the Kansas Dairy Industry, the Kansas Dairy Association supports SB 395.

I would be more than happy to answer any questions at this time or at any other appropriate time.

Testimony on Senate Bill 395
to
The House Agriculture and Natural Resources Committee

by **Constantine V. Cotsoradis**
Deputy Secretary
Kansas Department of Agriculture

March 1, 2010

Good afternoon, Chairman Powell and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here in support of Senate Bill 395.

The dairy inspection program serves two main purposes. One is to provide consumer protection and confidence that milk is safe and wholesome. The other purpose is to provide inspections as specified in the interstate milk shippers' agreement. Failure to comply with this agreement could adversely affect the state's Grade "A" dairy market.

Representatives from the dairy industry and their respective associations met with us beginning soon after last session. We were in agreement that the dairy inspection program was important, but the questions of whether there were efficiencies that could be realized and how to fund the program left room for discussion.

I can report that we have made changes to the program, such as performance-based inspections, that have made the program more efficient. Also, despite having our request for state general funds denied, we have developed through our discussion with the stakeholder group a fee package that will sustain the program. This bill increases some fees and adopts some new fees but only at levels necessary to adequately fund the program.

We understand the reality of seeking a fee increase at this time, but the alternative is far less desirable. Without additional funds, the dairy inspection program likely will be unfunded in 2012 and the dairy industry then may not be able to ship their milk across state lines. This is a real possibility as we have had to suspend or cease other programs in the agency due to budget reductions.

The dairy industry is very important to this state's economy and to the rural areas in which they are located. Maintaining the dairy inspection program through the fee increases in this bill will ensure the viability of the dairy industry and its Grade "A" market.

I will answer questions at the appropriate time.

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Attachment 2



Since 1894

TESTIMONY

To: House Agriculture and Natural Resources Committee
Representative Larry Powell, Chairman

From: John Donley, Assistant General Counsel

Date: March 1, 2010

Re: SB 395 – Dairy Fee Bill

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,000 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, dairy production, grazing land management and diversified farming operations.

My name is John Donley, and I am Assistant General Counsel for the Kansas Livestock Association. I appreciate the opportunity to provide testimony and discuss KLA's position on SB 395.

Last year, KLA opposed a House bill that would have increased the fees to fund the Kansas Department of Agriculture's Dairy Program. KLA had two main concerns with the proposal from last year. First, we felt that the Department could still find efficiencies within the program and a fee increase was not necessary. Second, the fee schedule proposed last year would have had a more direct impact on dairy producers in Kansas.

Fortunately, the Department of Agriculture and other stakeholder groups were willing to compromise on these issues, and this bill is the result of that compromise. In order to become more efficient, the Department has gone to a performance based inspection schedule as well as finding other internal efficiencies within the program. With regards to the second issue of the direct impact of the fee increase on dairy producers, KLA feels that the proposal in SB 395 is more acceptable than last year's proposal because not as much of the burden to fund the Dairy Program will be placed on dairy producers.

Essentially, SB 395 increases the fee charged to milk processors and distributors in the state from \$0.015 per 100 pounds to \$0.02 per 100 pounds of milk. While we recognize that much of this cost will flow through the marketplace and be a burden on producers, we also appreciate the fact that this proposal will not have as direct of an impact on dairy producers during a time where the dairy industry's profitability has significantly struggled.

The state's dairy inspection program is important because a state inspection is necessary to meet the requirements of the International Milk Shippers Agreement. However, it should also

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Attachment 3

be noted that these inspections have a general public benefit. It is important to point out that this program should be funded through more state general fund dollars in the future to reflect the benefit the public receives. We understand that these are tough budgetary times and are therefore willing to agree to a fee increase that will sunset in 2015. However, this support comes with the desire that state general fund dollars will begin to provide a higher percentage of the funding of this program in the future.

KLA would encourage you to look favorably towards SB 395 and understand that the dairy industry understands the importance of providing a safe product to the consumer while allowing the growing Kansas dairy industry the continued opportunity to export our product out of this state. I would be happy to stand for questions at the appropriate time.

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March 1, 2010

Testimony offered to The House of Representatives Standing Committee on Agriculture and Natural Resources in support of SB 497.

James P. Rankin and Jim Maag of Foulston Siefkin LLP represent KAI-USA Ltd. and Kershaw Knives. KAI is an internationally renowned manufacturer of kitchen cutlery and its subsidiary, Kershaw Knives, is a well-known and respected Oregon-based manufacturer of specialty knives and tools for use by hunters, fishermen, ranchers, farmers, contractors, EMTs, police and others.

It is specifically Kershaw pocket assisted-opening knives and similar knives offered by other knife manufactures that are the subject of SB 497, the proposed amendment to the Kansas Criminal Weapons statute, K.S.A. 2009 Supp. 21-4201(a)(i) and (a)(2) now before the Committee.

The language of the proposed SB 497 exception comes directly – if not exactly – out of the recent amendment to the federal switchblade law signed last year by President Obama. Also, the “detent” and “bias” terms are also found in the exception clauses to criminal weapons laws found in revisions of at least two state laws:

California Penal Code Section 653k states in pertinent part:

“Switchblade knife” does not include a knife that opens with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade, provided that the knife has a detent or other mechanism that provides resistance that must be overcome in opening the blade, or that biases the blade back toward its closed position.

Texas Penal Code Section 46.01(11) states in pertinent part:

[switchblade knife] does not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure and open the knife.

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Attachment 4

SB 497's exception language is designed to be consistent with exceptions made in Texas and California law, as well as federal law. We believe the statute should be amended with essentially the same language used to amend the federal switchblade law and the state laws of Texas and California.

Well intentioned efforts to "simplify" our proposed revision could have unintended consequences, leaving undue breadth in the exemption or gaps in the appropriate coverage of the exemption.

We submit the language we propose will not be confusing to police. Our proposal introduces but two new terms:

- (i) "detent" (referring to that part of the knife mechanism which catches the knife blade open and keeps it closed – until overcome by hand pressure);
- (ii) "bias" (referring to the tendency of a switchblade to be "biased" toward open *versus* the tendency of an assisted opening knife blade to be biased toward closed).

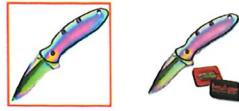
We believe such terms are useful and not particularly technical. In fact, they direct the judiciary and law enforcement to a more specific and limiting descriptive provision for use when testing applicability of the proposed exception.

SB 497 also proposes an amendment to the "carrying" exception found in K.S.A. 21-4201(a)(2). Originally, the Bill proposed to except "other folding [knives] not prohibited under subsection (a)." After discussing this language with a concerned commentator, we revised the language to more carefully limit the *carrying* exception. The Bill now proposes the following:

"or other folding pocket knife specifically exempted under subsection (a)(1)."

Additionally, we have added the term "pocket" [knife] to the proposed exemption of subsection (a)(1) so as to further distinguish exempted knives from a disguised dagger, switchblade, gravity or butterfly knife. The latter types of knives have traditionally, and we believe properly, been treated as thug weapons by our law.

Our only purpose is to insure our client's ability to sell and distribute its hunting, fishing, and ranching tools in our state. While the existing law does not prohibit our client's products, both Kansas police and judges have thought otherwise. Therefore, clarification is very important. We believe the best and most effective clarification is to borrow descriptive language from federal law and the law of sister states designed to carefully describe the knives and their operational characteristics so as to restrict the exemption to only those knives meant for lawful purposes and at the same time provide meaningful parameters for law enforcement and judiciary to use in determining applicability in a specific case.



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Randol Walker Notes

March 1, 2010

Mr. Chairman, Committee Members – Good Morning!

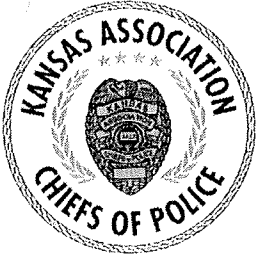
My name is Randol Walker. I live at 2326 SW Hodges Road, Topeka, Kansas. I am a retired educator who, during a 40 year career in that profession, worked as a teacher, coach, building and central office administrator. I have also been actively involved in farming and have enjoyed hunting and fishing for most of my life.

Since purchasing my first assisted opening knife at Farmers Union Coop at Harveyville several years ago, I have found it as useful and as much a part of my daily gear as my pliers. They are so useful because they are handy and convenient to use in many applications. Their design permits one-handed operation even with gloves which simplifies the daily cutting of twine off large round or small square hay bales or opening feed or mineral bags when that little quick open string breaks and a group of cows are encouraging you to hurry. The one-gloved hand utilization coupled with a design that locks the open blade in place provides the safety edge in an emergency when it may be necessary to cut a rope being used to restrain a farm animal out in a pasture during medication, calving, etc. I could cite other examples of their use but you get the point. The design features of these tools have also proven useful for cleaning fish, field-dressing game birds and deer as well as many other cutting chores involved with these pursuits. My observation of other farmers, fishermen and hunters tells me I am not alone nor unique in my use of this handy tool in day-to-day work. I am also aware that some of these knives are commonly used by those in other lines of work such as construction – in fact recently I visited with one of the Capital renovation workers who was carrying such a tool. They were also on sale at a local auto parts store where I purchased plugs and points last week.

I would look favorably on legislation that would clarify that such knives be viewed as legal useful tools rather than illegal weapons.

Thank you.

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Attachment 5



Kansas Association of Chiefs of Police
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Kansas Peace Officers Association
PO Box 2592, Wichita, KS 67201 (316)722-8433



March 1, 2010

Testimony to the House Agriculture and Natural Resources Committee In Opposition to SB497

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association oppose SB497. To be clear, please understand our opposition is not to the legal status of the knives that have been described to you, but to the unnecessary change in the statute proposed in the bill. We do not feel, and in fact the proponent's testimony in the Senate hearings stated, that these knives are not prohibited under existing statutory language. We believe any problems of application of the current statute are a law enforcement training issue and not a statutory issue. As an example, we know of one of the larger police departments that identified the problem the proponents have described as their officers applied a city ordinance. Their fix to that problem was 1) amending their ordinance to match existing state law, and 2) providing roll call training to the officers.

Some of the language in the current bill was amended into the statute on the Senate floor attempting to address some of our concerns. It is still problematic language, although better than the original language. Our gravest concern is with the changes to subsection (a)(2). The changes make it clear these knives cannot be determined to be a "dangerous knife" under any circumstances. This is substantial change to this law. It is clear in the case law that the primary determination if a knife is a "dangerous knife" is how the knife is being used or intended to be used. This language change will mean these knives will be exempt by statute from such finding regardless of how the knife is used or intended to be used.

Our second concern is with the exemption definition in subsection (a)(1). This definition comes from federal law. It is highly based on engineering terms such as "detent" and "bias toward closure." We do not believe this language is any clearer than current statutory language.

In subsection (a)(1) there are really two separate knife prohibitions. The first is switchblade knives which require a button or device on the handle to release the blade "that opens automatically." ("any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife") The second is for knives that open with centrifugal force or with an outward thrust or movement. ("a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement") This section of the existing law was implemented to address a problem with knives with a blade held closed by tension against the blade but without a spring loaded mechanism to extend the blade *automatically* like the switchblade does. These knives were designed to circumvent the switchblade laws. They were designed so that swinging the knife would cause the centrifugal force to pull the blade from the tension device holding it shut and extend it to a locked position without assistance from a spring. This is an example of how some less reputable knife manufacturers will use statute language to their advantage if not carefully crafted. It is why we believe the proposed language may open a gap in the existing law allowing circumvention of the law regarding currently prohibited knives.

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Attachment 6

We do not believe there is any dispute the knives in question are not switchblades. They clearly do not have a button in the handle nor do they “open automatically.” We believe any confusion comes from the language of the second prohibition. The knives the proponents believe need protecting open with an outward motion of the thumb against the blade.

One of our concerns with subsection (a)(1) is the placement of the new language. The current placement makes the exemption apply to both of the prohibitions I listed above. As stated we are confident it is not needed in regards to the switchblade prohibition. And we believe the application of the exemption language to switchblades unnecessarily opens the switchblade prohibition up to unintended consequences.

One of the tasks that I have recently been engaged in is serving as vice-chair of the Criminal Code Recodification Commission. The proposed language is the type of language the commission worked to remove from the statutes and replace with plain, easily understood language. We also believe it is not good statutory practice to start listing all of the exceptions in the statute when it can be avoided, but rather to clearly state what is prohibited.

Additionally, federal law is not always the best example to use in state statute. Federal laws are most commonly aimed at controlling interstate commerce and manufacturing and not street level enforcement. For this reason, we believe it is not necessary nor the best solution to replicate the federal law into Kansas law.

We urge you to not recommend this bill favorably for passage. **We strongly urge you to not amend subsection (a)(2) as it will clearly change the law as it relates to established case law on “dangerous knife.”**

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House Committee on Agriculture and Natural Resources
March 1, 2010

Written Testimony in Opposition to SB 497

Submitted by Marc Goodman
Lyon County Attorney
Kansas County and District Attorneys Association Board Member

Chairman Powell and Committee Members,

Thank for the opportunity to present written testimony in opposition to Senate Bill 497. The Kansas County and District Attorneys Association (KCDAA) oppose the legislation in its current form.

The proposed language continues to provide a confused and murky definition of the exemption as not being a "switchblade". This definition is further clouded by the fact that there are no definitional sections describing the parts of the mechanism, and it appears no one is wanting to offer an opinion of whether this knife is a switchblade or not. That is the very issue which caused Court security in Lyon County to have seized any number of these type knives as being switchblades.

We urge you to reconsider the current language of SB 497 to provide law enforcement and the public with clarity on this issue. Thank you for the opportunity to address the committee on this subject and I would be happy to answer any questions upon request.

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Attachment 7