

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 8, 2010, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Johnson - 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:

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture
Don Saylor, CEO, Kansas Restaurant and Hospitality Association

Others attending:

See attached list.

Chairman Powell opened the meeting by commenting on his trip last week to Washington, D.C., while attending the 2010 Federal Energy and Environmental Matters Conference. Dignitaries in attendance represented Venezuela, along with a presentation from the U.S. Ambassador to Venezuela from Caracas, as well as a representative from the Canadian Embassy. The main topic focused on oil and oil reserves.

Chairman Powell then opened the hearing on **HB 2659** with an explanation of the bill by Raney Gilliland, Kansas Legislative Research Department, who advised the bill makes a number of changes in the statutes relating to the current licensure of lodging establishments in the state. On one hand, the bill is repealing the requirements for a license; however, it retains the authority for the Secretary of Agriculture, upon complaint, indicating the lodging establishment does not comply with the applicable standards promulgated in the rules and regulations of the secretary, to inspect the lodging establishments. Mr. Gilliland further explained that even though there is no license issued by the state under this bill, the Secretary of Agriculture would still maintain the authority to close the establishment. Mr. Gilliland distributed copies of Statute 36-502 which was not explained in **HB 2659**, to members of the Committee (Attachment 1).

Hearing on HB 2659:

OPPONENTS:

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture, spoke in opposition of **HB 2659** (Attachment 2), stating that in January, 2010, the Kansas Department of Agriculture (KDA) temporarily suspended all lodging inspections due to budget cuts. Further, from KDA's discussion with the House Budget Subcommittee, KDA's understanding of the bill was that it was to fund a complaint-based program. However, KDA is not confident this bill does what the subcommittee intended in that it does not provide the funding needed to conduct a complaint-based inspection program. Mr. Cotsoradis added that the KDA believes the better alternative to **HB 2659** is a bill the Senate Ways and Means Committee introduced which establishes in statute a lodging fee fund separate from the state general fund. This proposed Senate bill would provide for a lodging program that will meet the needs of the lodging industry, tourism and consumers, and will accomplish it at a lower cost than the program that was suspended.

Don Saylor, CEO, Kansas Restaurant and Hospitality Association (KRHA), presented testimony in opposition of **HB 2659** (Attachment 3), advising by eliminating the licensure of lodging facilities in the state would cause great harm to the lodging/tourism industry to the extent that the perception with the public will be that KRHA's hotels and motels are not licensed, therefore not regulated or inspected for safety and health issues. Secondly, Mr. Saylor explained that by eliminating the licensure requirement, the state, when called to inspect a facility upon complaint by a consumer, would be forced to take extraordinary steps in order to take action against the facility which ultimately would require delay and lack of protection for the public. In conclusion,

CONTINUATION SHEET

Minutes of the House Agriculture and Natural Resources Committee at 3:30 p.m. on March 8, 2010, in Room 783 of the Docking State Office Building.

Mr. Saylor stated the KRHA would continue to work with the KDA on an overall solution to this issue, but feels that **HB 2659** is not the best solution to this problem.

After questions were asked by members of the Committee, the hearing was closed on **HB 2659**.

Steve Moris, Kansas Department of Agriculture, Food Safety and Lodging Program, also answered questions from members of the Committee.

Chairman Powell continued the meeting with action on the following bills.

Action on:

SB 395 - Changes to dairy, milk and milk product statutes. Committee action was postponed until tomorrow, March 9, on this bill, due to lack of sufficient documentation relating to proposed changes to the bill.

Action on:

SB 497 - Excluding certain knives from the definition of a criminal weapon.

Daniel Yoza, Office of the Revisor of Statutes, distributed a balloon amendment on **SB 497** (Attachment 4) and explained that the balloon amendment designates the difference between a switchblade and a pocket knife by adding the wording "an ordinary" before pocket knife.

Representative Hineman made a motion to adopt the balloon amendment. Representative Hayzlett seconded the motion. The motion carried.

Representative Hayzlett made a motion to pass out the bill favorably as amended. Representative Hineman seconded the motion. The motion carried. Representative Hineman will carry the bill.

Action on:

SB 396 - Laboratory equipment fund

Raney Gilliland, Kansas Legislative Research Department, explained **SB 396** would address the issues with the Agriculture and Metrology Laboratories within the Department of Agriculture. The bill would allow the Secretary of Agriculture to request a transfer of not more than 10% of any carry-over balance in the specified fee funds at the end of the fiscal year to what is called the Laboratory Equipment Fund. The Laboratory Equipment Fund has not been funded for some time and this bill will allow, over a period of time, monies to be put in this fund to help with the acquisition, maintenance and replacement of certain equipment in the two laboratories in the Department of Agriculture.

Representative Moxley made a motion to pass the bill out favorably and put the bill on the consent calendar. Representative Wetta seconded the motion. The motion carried. Representative Moxley will carry the bill.

The next meeting is scheduled for March 9, 2010.

The meeting was adjourned at 4:40 p.m.

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36-502**Chapter 36.--HOTELS, LODGINGHOUSES AND RESTAURANTS****Article 5.--FOOD SERVICE AND LODGING ESTABLISHMENTS**

36-502. License for lodging establishment required; application, form; inspection; denial, hearing; designation of type of unit; display; duplicate; fees; existing licenses continued in effect. (a) It shall be unlawful for any person to engage in the business of conducting a lodging establishment unless such person shall have in effect a valid license therefor issued by the secretary of agriculture. Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by the appropriate license fee required by subsection (c) of this section. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the lodging establishment designated in the application, to determine that it complies with the standards for lodging establishments promulgated pursuant to this act. If such lodging establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) Each license shall designate whether the licensed lodging unit is a hotel, rooming house or boarding house. Any person obtaining a license to engage in the business of conducting a rooming house or boarding house shall not have the right to use the name "hotel" in connection with such business. Every license issued hereunder shall be displayed conspicuously in the lodging establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

(c) The fee for a license to conduct a lodging establishment in this state for all or any part of any calendar year shall be \$30, except that the fee for any lodging establishment containing 10 sleeping rooms shall be \$35 and for every additional 10 rooms therein, an additional fee of \$5 shall be charged. All lodging establishments which are new, newly constructed or have a change of ownership shall pay an application fee which may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed \$100 in addition to the license fee.

(d) Any person who, on the effective date of this act, has a valid license to operate a hotel or rooming house shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a lodging establishment issued under the provisions of this act.

History: L. 1975, ch. 314, § 6; L. 1978, ch. 154, § 1; L. 1984, ch. 313, § 55; L. 2008, ch. 84, § 10; Oct. 1.

Ag & Natural Resources Committee
Date 3-29-10
Attachment 1

Testimony on House Bill 2659
to
The House Agriculture and Natural Resources Committee

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

March 8, 2010

Good afternoon, Chairman Powell, and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here in opposition to House Bill 2659

As most of the committee knows, in January the Kansas Department of Agriculture had to temporarily suspend all lodging inspections due to budget cuts. The lodging program is funded entirely through state general fund dollars, and when we received our November allotment, we were forced to lay off all lodging inspectors. Since then, we have conversed with different stakeholders to try to find a way to have a dedicated revenue source to fund these inspections.

From our discussions with the House budget subcommittee, our sense of this bill was that it was to fund a complaint-based program. However, we are not confident this bill does what the subcommittee intended. It also does not provide the funding needed to conduct a complaint-based inspection program.

Under this bill, lodging establishments would no longer be required to pay for and obtain an annual license. This is accomplished by repealing the requirement that any person engaged in a lodging business have a valid license issued by the secretary of agriculture. The bill would change the current requirement that lodging establishments be inspected before being issued their initial license. The lodging establishment would only be subject to an inspection when the Kansas Department of Agriculture received a complaint that the establishment does not comply with rules and regulations promulgated by the department.

Again, while it states that we would investigate a complaint, it does not provide funding for the activity nor does it provide staffing. To correct this, the bill would have to retain the licensing requirement, including the fee, which would have to be deposited in a lodging fee fund for the agency to use to operate the program. However, that change alone is not enough to fund a complaint-based inspection program.

Another area that should be reconsidered is the section requiring that an establishment with violations be closed. As written, the bill limits our ability to work with a facility that has violations because it requires a lodging establishment to close if they are out of compliance with any of the regulations at reinspection. If closing the facility is the only remedy, we have less flexibility to work with a facility to achieve compliance. Also, it would require us to go through the courts to seek some type of injunction since the facility would not have a license to revoke, which is our normal means to close a noncompliant business.

We believe a better alternative to HB 2659 is a bill the Senate Ways and Means committee introduced today. It establishes in statute a lodging fee fund separate from the state general fund. It also increases license and application fees to create the necessary funding to hire two additional inspectors to conduct complaint and licensing inspections, as well as a limited number of routine inspections. The \$150,000 in revenue that would be generated under the proposed Senate bill is significantly less than the \$250,000 that was appropriated for the program prior to the 2010 budget cuts. However, it will provide for a lodging program that will meet the needs of the lodging industry, tourism and consumers, and it will do it at a lower cost than the program we suspended.

We believe the alternative to HB 2659 will result in a program that instills confidence in Kansas residents and visitors that our hotels are being inspected and are operating under the required sanitation standards.



Testimony Re: HB 2659
House Agriculture and Natural Resources Committee
On behalf of
Kansas Restaurant and Hospitality Association
March 8, 2010

Mister Chairman, Members of the Committee:

My name is Don Saylor, and I am CEO of the Kansas Restaurant and Hospitality Association. The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Educational Foundation, the association works to represent, educate and promote the growing industry of hospitality in Kansas.

KRHA opposes HB 2569 as it currently reads for a variety of reasons. First of all, the bill appears to eliminate the licensure of lodging facilities in the state. This will cause great harm to our industry to the extent that the perception with the public will be that our hotels and motels are not licensed, and are therefore not regulated, and inspected or checked for safety or health issues. This will, in our opinion, hurt our lodging reputation in Kansas.

Secondly, by eliminating the licensure requirement, the state, when called to inspect a facility upon a complaint by a consumer, will be forced to take extraordinary steps in order to take action against the facility. The bill authorizes the Kansas Department of Agriculture (KDA) to "shut the business down", but the KDA will not be able to do that easily. With licensure, the act of operating the business is a privilege, which can be restricted by the state. The license can be suspended, revoked, or have other actions imposed by the state. Those legal actions are subject to due process, and must be taken pursuant to the Kansas Administrative Procedures Act, which permits, among other protections, the right to appeal findings to district court. However, without licensure, the state will have to bring a civil action, using common law recoveries, against the facility in District Court, and this will require delay and ultimately lack of protection for the public.

Our industry is under extreme stress at this point. We are facing numerous attacks from this very legislature, in the form of tax increases on alcohol, tax increases on non-alcoholic beverages, passage of smoking bans, competition from publicly owned lodging facilities such as cabins operated by the Kansas Department of Wildlife and Parks, dramatic increases in Unemployment Insurance tax, and an economy which is strangling tourism and significantly reducing our revenues. We can not take any more adverse actions, whether by government or otherwise. If we have our reputation damaged by the appearance of no government oversight regarding our health and safety, we will suffer greatly in this state.

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 Attachment 3

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By the same token, we know that KDA suspended the inspection program because of cost demands on the State General Fund (SGF). We understand the state's concerns, and we have been working with KDA to try to solve this problem, which hurts our industry and, consequently, the state taxpayers as well.

We would be willing to work with the KDA on implementation of a program of inspections that would concentrate efforts on complaints. For years, the inspection program for Kansas was based primarily upon complaints, with no pro-active inspection program beyond that. The consumers felt secure, and our industry was subject to oversight which protected the public.

As an industry, we currently pay fees, and we are willing to look at what fees would need to be paid in order to insure that the KDA can maintain a program of complaint based compliance, and which can also permit inspections of new facilities, and perhaps even an ongoing inspection program that inspects facilities over some degree of frequency. If such a program is going to be implemented, we desire that the fees our members pay to the state stay within the fee funded agency, and that our fees be utilized for inspections only, and not other state general fund operations.

We also would support a penalty system, which would require facilities causing the complaints through non-compliance with the state health and safety requirements to pay a fine which could also be used to fund this program.

KRHA believes that we are in the tourism industry, and safe, clean lodging facilities are of the utmost importance to us and to the strength of our industries. We are more than willing to partner with KDA to assist in educational efforts, or to take part any other solutions to problems that threaten the welfare of the lodging/tourism industry. We strongly support efforts as an industry, or in support of state action, to insure that our industry is safe and clean, and we will be wholly supportive of any reasonable solutions to such a problem. Kansas and the lodging, restaurant and hospitality industries need to present tourism and our industries in the most positive light possible, and the KRHA is dedicated to that end and will support steps necessary to insure that such occurs.

We continue to work with KDA on an overall solution to this issue, but feel that HB 2659 is not the best solution to this problem.

KRHA thus opposes HB 2659.

Thank you very much for permitting me to testify and I will be happy to yield to questions.

SENATE BILL No. 497

By Committee on Natural Resources

2-1

10 AN ACT concerning crimes and punishments; relating to the criminal
11 use of weapons; amending K.S.A. 2009 Supp. 21-4201 and repealing
12 the existing section.

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

15 Section 1. K.S.A. 2009 Supp. 21-4201 is hereby amended to read as
16 follows: 21-4201. (a) Criminal use of weapons is knowingly:

17 (1) Selling, manufacturing, purchasing, possessing or carrying any
18 bludgeon, sandclub, metal knuckles or throwing star, or any knife, com-
19 monly referred to as a switch-blade, which has a blade that opens auto-
20 matically by hand pressure applied to a button, spring or other device in
21 the handle of the knife, or any knife having a blade that opens or falls or
22 is ejected into position by the force of gravity or by an outward, downward
23 or centrifugal thrust or movement. *This subsection shall not prohibit a*
24 *[pocket] knife which has a spring, detent or other device which creates*
25 *a bias towards closure of the blade and which requires hand pressure*
26 *applied to such spring, detent or device* ~~through~~ **[through]** *the blade of the*
27 *knife to overcome the bias towards closure to assist in the opening of the*
28 *knife;*

an ordinary

29 (2) carrying concealed on one's person, or possessing with intent to
30 use the same unlawfully against another, a dagger, dirk, billy, blackjack,
31 slungshot, dangerous knife, straight-edged razor, stiletto or any other dan-
32 gerous or deadly weapon or instrument of like character, except that an
33 ordinary pocket knife ~~or other folding knife not prohibited~~ **[pocket knife**
34 **specifically exempted]** ~~under subsection (a) [(1)]~~; with no blade more
35 than four inches in length shall not be construed to be a dangerous knife,
36 or a dangerous or deadly weapon or instrument;

37 (3) carrying on one's person or in any land, water or air vehicle, with
38 intent to use the same unlawfully, a tear gas or smoke bomb or projector
39 or any object containing a noxious liquid, gas or substance;

40 (4) carrying any pistol, revolver or other firearm concealed on one's
41 person except when on the person's land or in the person's abode or fixed
42 place of business;

43 (5) setting a spring gun;

Balloon amendment prepared for
House Agriculture and Natural
Resources Committee
March 8, 2010

Ag & Natural Resources Committee
Date 3-29-10
Attachment 4