

SESSION OF 2002

SUPPLEMENTAL NOTE ON SENATE BILL NO. 395

As Amended by House Committee of the Whole

Brief*

SB 395 would create a new crime of endangering the food supply which would be a class A nonperson misdemeanor. Endangering the food supply when the contagious or infectious disease is foot-and-mouth disease would be a severity level 4, nonperson felony. Endangering the food supply would be a severity level 3, nonperson felony, if done with the intent to cause damage to plants or animals or to cause economic harm or social unrest. Endangering the food supply is a severity level 3, person felony, if done with the intent to cause illness, injury or death to a human being or beings. Any of these offenses would be considered to be an inherently dangerous felony under KSA 21-3436.

Under the bill endangering the food supply is knowingly:

- ! Bringing into this state any domestic animal which is affected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;
- ! Exposing any animal in this state to any contagious or infectious disease;
- ! Delivering any poultry which is infected with any contagious or infectious disease to any poultry producer pursuant to a production contract;
- ! Bringing or releasing into this state any plant pest or exposing any plant to a plant pest, except as permitted under current law; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.accesskansas.org/legislature/>

- ! Exposing any raw agricultural commodity, animal feed, or processed food to any containment or contagious or infectious disease.

The above provisions of the bill would not apply to *bona fide* experiments and actions carried on by commonly recognized research facilities.

In addition, the bill would amend the section of criminal law dealing with criminal threats. Specifically, the bill would make it a criminal threat to threaten to adulterate or contaminate a raw agricultural commodity, animal feed, plant, or threaten to expose any animal to any contagious or infectious disease. These changes would be additions to the current law. (A criminal threat is a security level 9, person felony.)

The bill also would amend KSA 2001 Supp. 48-924 to allow the Governor to issue a proclamation declaring a state of disaster emergency if there is a contagious or infectious disease among plants, raw agricultural commodities, animal feed or processed food. There would need to be a finding that a quarantine or other regulations are necessary to prevent the spread of the disease.

Also, the bill would repeal KSA 2001 Supp. 47-623, the penalty provision adopted last year providing certain penalties for knowingly exposing domestic animals to contagious or infectious diseases.

In addition, the bill would establish certain requirements for poultry production contracts. The contracts would be required to:

- ! Be written in a readable form and be accompanied by a written disclosure statement setting forth the nature of the material risks faced by the poultry producer;
- ! Be negotiated and entered into in an environment free from unfair or deceptive trade practices or other violations of law;
- ! Not require disclosure of trade secrets and not be contrary to the Uniform Trade Secrets Act;

- ! Not require poultry producers to reveal intellectual property rights nor disclose personal financial information or production practices;
- ! Not prohibit nor discourage poultry producers from associating with other poultry producers to compare contract terms or address concerns or problems;
- ! Not prohibit nor discourage poultry producers from seeking professional, legal, financial, and agricultural production advice and counsel related to production contract terms, obligations, and responsibilities;
- ! Not allow a contractor to terminate any poultry production contract with a poultry producer that has complied with the provisions of the poultry production contract; and
- ! Not deny poultry producers of the ability to address a dispute in the Kansas courts.

Any provision of a poultry production contract which violates any of the above provisions would be void and unenforceable. A contractor who would violate any of these provisions would be subject to a civil penalty and to a class C nonperson misdemeanor. The Attorney General's Office or a county or district attorney could enforce these provisions.

The bill would take effect upon publication in the *Kansas Register*.

Background

Those appearing before the Committee included the Secretary of Agriculture and representatives of the Kansas Bureau of Investigation, the Kansas Livestock Association, the Kansas Grain and Feed Association, and the Kansas Farm Bureau. All supported the concept of the original bill. The Secretary of Agriculture expressed concern about the original bill and indicated that it could seriously impact the movement of plants and grain in Kansas and prohibit public and private research on plant diseases. The Secretary offered amendments to the bill. There were no opponents appearing on the bill.

The fiscal note states that the bill would have no fiscal effect on the Animal Health Department. The note also states that the Department of Agriculture and the Attorney General have not yet provided information regarding the fiscal effect of SB 395 and that if they do a revised fiscal note will be provided.

The Senate Committee of the Whole amended the bill to add new violations to the statute making it a crime to make criminal threats.

The House Committee on Agriculture amended the bill to make endangering the food supply a class A nonperson misdemeanor. The Committee also amended the bill to make endangering the food supply when the contagious or infectious disease is foot-and-mouth disease a severity level 4, nonperson felony. In addition, the Committee amended the bill to make the provisions of the bill not applicable to bona fide experiments and actions carried on by commonly recognized research facilities.

The House Committee of the Whole amended the bill to add the provision relating to poultry production contracts. It also amended the bill to make knowingly delivering any poultry which is infected with any contagious or infectious disease to any poultry producer pursuant to a production contract one of the aspects of endangering the food supply.