

MINUTES OF THE HOUSE COMMITTEE ON TOURISM AND PARKS.

The meeting was called to order by Chairperson Becky Hutchins at 3:38 p.m. on March 10, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Broderick Henderson - excused  
Representative Margaret Long - excused

Committee staff present: Mary Torrence, Revisor of Statutes' Office  
Hank Avila, Legislative Research Department  
Russell Mills, Legislative Research Department  
Sarah Samuelson, Committee Secretary

Conferees appearing before the committee:

proponents: Sandy Braden, Travel Industry Association of Kansas  
Derenda Mitchell, Kansas Livestock Association

opponents: Gary White, Kansas Trial Lawyers Association  
Leslie Kaufman, Kansas Farm Bureau

written testimony: Marci Penner, Director, Kansas Sampler Foundation

Others attending: see attached list

**SB 134 - Limiting liability of property owners to persons entering premises for agritourism and ecotourism purposes.**

**Proponents**

Sandy Braden, representing the Travel Industry Association of Kansas, addressed the committee as a proponent of the bill (Attachment 1). She discussed the increase in leisure travel and in people's interest in visiting rural areas and participating in such activities as farm visits and birdwatching. These activities provide alternatives for landowners to replace and supplement traditional farm operations with other ventures, but these efforts are in some cases being hindered by the issue of liability.

Representative Osborne asked about other states' policies on this issue. Staff member Hank Avila distributed a document addressing this (Attachment 2).

Representative Ruff requested definition of the activities referred to in the bill, and asked whether this expands immunity from liability for farmers. Ms. Braden replied that it does.

Representative Schwab asked whether Castle Rock is now closed because of their liability. Ms. Braden said she isn't sure about that. He asked whether this bill limits liability or caps it. Ms. Braden said it expands the activities for which a landowner is immune from liability. The caps for the current liability remain the same.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TOURISM AND PARKS at 3:30 p.m. on March 10, 2003 in Room 243-N of the Capitol.

Representative Beggs asked how different this is from the concept of a hold-harmless law. Staff member Mary Torrence said that the two may be equivalent, that this legislation might be Kansas' way of doing the same thing.

Chairperson Hutchins recognized Gary White, representing the Kansas Trial Lawyers Association, from the gallery. His testimony is discussed below, with the opponents.

Derenda Mitchell, representing the Kansas Livestock Association, addressed the committee as a proponent of the bill ([Attachment 3](#)). She said that protection from litigation is a fair exchange for the cultural, educational, historical, and recreational opportunities that landowners can provide. SB 134 offers these protections by expanding and clarifying what constitutes "recreational purpose." However, the KLA has reservations about amending the present statutes, which are working well. Ms. Mitchell expressed concern that the legislature not erode existing protections, and not introduce uncertainty into the statutory language. The KLA supports SB 134 in its current form, but would oppose amendments that lessen or remove the protections provided by law.

Representative Ruff asked why the KLA opposes the amendment in which landowners are liable for people riding on farm equipment. Ms. Mitchell explained that activities such as riding along on farm equipment or hayrack rides are subject to the current protections of the law, and that those are recreational activities that are currently allowed under the language in the statute; consequently, it's not appropriate to carve out an exception that would preclude those activities.

Representative Ruff requested clarification on whether the KLA supports the bill as it stands now, without further amendments. Ms. Mitchell said that is true, unless such amendments were merely for clarification of wording.

Representative Schwab asked, regarding the willfulness issue, to what extent a person riding on a hayrack assumes upon himself the risk of falling, under the current statute. Ms. Mitchell said that the hayrack driver would be immune under current law; he might then be sued, and be subject to liability under some other theory, but under this law he is immune from liability.

Representative Schwab asked whether this legislation really would change much in terms of the liability placed on farmers and the responsibility placed on the visitor. Ms. Mitchell replied that this bill does not change the current law very much, and that is one reason the KLA is in support of it. Primarily, it clarifies what the existing law says.

Representative Hutchins requested clarification about the list of "includes, but not limited to" in the definition of recreational purpose, and why "hayrack riding" is not in that list; and whether it is covered by current law. Ms. Mitchell replied that it is. Representative Hutchins asked whether it could be added to the list, just to clarify things; Ms. Mitchell said that it could.

### **Written Testimony**

Chairperson Hutchins called the attention of the committee to written testimony from proponent Marci Penner, Director of the Kansas Sampler Foundation ([Attachment 4](#)). In her testimony, Ms. Penner shared

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TOURISM AND PARKS at 3:30 p.m. on March 10, 2003 in Room 243-N of the Capitol.

many specific examples of Kansans who have had ideas for rural entrepreneurship, but have been discouraged or hindered from carrying out these ideas because of the fear of liability.

### **Opponents**

Gary White, representing the Kansas Trial Lawyers Association, addressed the committee as an opponent of the bill ([Attachment 5](#)). He explained that this legislation provides for immunity for negligent acts or wanton acts, but not for willful or malicious acts, in which the landowner knows about a dangerous condition but intentionally doesn't warn people of it. KTLA recommended an amendment ([Attachment 6](#)) that would allow for immunity for recreational farming and ranching activities, but would exclude activities that are particularly dangerous, such as operating or riding upon agricultural equipment.

Representative Beggs asked whether, with this amendment, farmers would be liable for people driving all-terrain vehicles on their property. Mr. White replied that they would not be liable except for misconduct, because the visitors are bringing their own equipment onto the property. If, for example, a farmer has taken out a bridge and fails to warn someone he has invited to come use his ATV, then he would be liable, but he would not be liable for someone driving into a tree or another ATV.

Representative Osborne asked whether the farmer would be liable for such conditions as ruts or potholes in the trail. Mr. White said he wouldn't.

Representative Schwab asked whether it would be considered willfulness for a landowner to send visitors with their ATV down a trail without warning them of a bridge on that trail that he knew was out. Mr. White said that is true, but that if the landowner didn't think the visitors would be using that trail, it would be considered recklessness. The issue is degrees of negligence: first is negligence, which is a failure to exercise reasonable care; next is wantonness, which is a reckless disregard for the rights of others; then is willfulness and maliciousness, which includes intent to commit harm.

Staff member Mary Torrence asked about the wording of the proposed amendment, because it says hayrack riding is an activity that is protected, but then it says riding on agricultural equipment is not. She commented that a hayrack is agricultural equipment, and this should be clarified in the language.

Leslie Kaufman, representing the Kansas Farm Bureau, addressed the committee as a qualified opponent of the bill ([Attachment 7](#)). She said that the KFB supports rural economic development opportunities, and that the intent of SB 134 seems to be consistent with the policy of the KFB. Statutory limitations on liability for those opening private land to recreational activities are important to the KFB and to the state. It encourages voluntary private efforts to provide recreational opportunities for non-landholders without requiring the state to own larger amounts of land.

However, Ms. Kaufman expressed some concerns about the bill. She said that the "included but not limited to" language currently in the statutes (KSA 58-3201) provides coverage for various activities, even if not specifically enumerated. The current statutes and case law are working well, and the KFB sees no need for change. They fear that opening up the issue might confuse things and allow for amendments that they would oppose. Ms. Kaufman also expressed concern about the current wording on lines 39-42 of page 1, and whether that language clearly identifies, when the bill is read as a whole, that the "person"

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TOURISM AND PARKS at 3:30 p.m. on March 10, 2003 in Room 243-N of the Capitol.

referred to is not the “owner.” Ms. Kaufman suggested that one possible way to add clarity to this section would be to strike the word “person” in line 39 and replace it with “non-owner”.

Representative Novascone asked about the line numbering. It was determined that the committee’s bill books do not reflect the amendments adopted by the Senate Committee of the Whole. They will be updated by the next meeting.

Chairperson Hutchins notified the committee of the fiscal note for SB 134, which says that there will be no fiscal impact.

Testimony from Sally Hatcher, President of the Kansas Preservation Alliance was distributed (Attachment 8). This addresses an amendment to SB 134 that has not yet been proposed, so it will be discussed on Wednesday.

Chairperson Hutchins closed the hearing on SB 134. She expressed her intention to work the bill on Wednesday, March 12.

The minutes from Feb 24 were distributed and approved without amendment.

Chairperson Becky Hutchins adjourned the meeting at 4:31 p.m.

The next meeting is scheduled for March 12, 2003.