TESTIMONY IN SUPPORT OF
SB 73

AN ACT CONCERNING MOTOR VEHICLES; RELATING TO DEFINITIONS.

Whitney Damron
Whitney B. Damron, P.A.
On behalf of
Polaris Industries

February 4, 2015

Good morning Chairman Petersen and Members of the Senate Committee on Transportation. I am Whitney Damron and I appear before you today on behalf of Polaris Industries in support of SB 73.

By way of information, Polaris Industries, Inc., is headquartered just outside of Minneapolis, Minnesota in Medina. The company has manufacturing plants in Minnesota; Wisconsin; Iowa; Monterrey, Mexico; distribution facilities in South Dakota and Ohio; and has just announced plans to build a new manufacturing facility in Huntsville, Alabama. Polaris Industries designs, manufacturers and markets innovative, high-quality, high-performance motorized products for recreation, utility and agriculture use.

Products include ATV and off-road vehicles, snowmobiles and motorcycles.

Polaris Industries is seeking to update three definitions in statute relating to off-road vehicles with definitions that accurately reflect off-road vehicles in the market today and allow for continued innovation. Statutory definitions have historically come from the industry when new or modified products were brought into the market and there was not an existing definition that fit the new product. As a result, over time our definitions have become in need of amendment.

Proposed changes to off-road vehicle definitions and comments in SB 73 are as follows:

K.S.A. 8-126

- **(a) "All-terrain vehicle"** means any motorized nonhighway vehicle 50 inches or less in width, having a dry weight of 1,500 pounds or less *and* traveling on three or more nonhighway tires~~, having a seat designed to be straddled by the operator. As used in this subsection, nonhighway tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 14 inches or less.~~

Amendment deletes the requirement for a straddle seat, as existing products utilize both straddle and bench or bucket seats. Also, the requirement for "pneumatic tires" and the wheel size limitation is replaced with the industry preferred term "nonhighway tires." Polaris has introduced a non-pneumatic tire technology, or NPT, to the commercial ATV market on the WV850 – which is a work vehicle suitable for mining, farming, ranching, and construction applications. The non-pneumatic, never-flat tire technology enhances vehicle handling in rough terrain. The NPT is composed of a central polymeric web surrounded by a rubber tread band which allows continuous operation, even if up to 30 percent of the web is damaged.

- **(ff) "Recreational off-highway vehicle"** means any motor *vehicle more than 50 but not greater than* 64 inches or less in width, having a dry weight of 2,000 pounds or less, traveling on four or more nonhighway tires~~, having a nonstraddle seat and steering wheel for steering control~~.

Amendment deletes the requirement for a straddle seat. Language relating to tires does not need to be amended in this statute. Also, steering wheel limitation is deleted.

A minimum size requirement is included of "greater than 50 but not greater than 64 inches." In the previous definition, an All-terrain vehicle is defined as being 50 inches or less in width.

- **(rr) "Work-site utility vehicle"** means any motor vehicle which is not less than 48 inches in width, ~~has an overall length, including the bumber, of not more than 135 inches,~~ has an unladen weight, including fuel and fluids, of more than 800 pounds and is equipped with four or more ~~low-pressure~~ *nonhighway* tires, a steering wheel and bench or bucket-type seating allowing at least two people to sit side-by-side, and may be equipped with a bed or cargo box for hauling materials. "Work-site utility vehicle" does not include a micro utility truck or recreational off-highway vehicle.

Amendment replaces low pressure with nonhighway tires which was explained previously in this testimony. Also, the maximum length requirement is removed. This style of vehicle has evolved over the years to allow for more passengers and/or the addition of vehicle storage boxes, beds or other attachments, which increase vehicle length, but the essential purpose remains the same whether equipped with one row or two rows of seating.

Included with my testimony is a picture of "work-site utility vehicle" and a very similar vehicle that is considered a "recreational off-highway vehicle" under current length restrictions, which illustrate the similarities of the products.

K.S.A. 8-1402(a) (All-terrain vehicle) and K.S.A. 8-1493 (Work site utility vehicle) are also amended for consistency with the previously-proposed amendments.

When I received the proposed changes from Polaris Industries, I scheduled a meeting with the Kansas Department of Revenue, Division of Motor Vehicles and met with Director Kaspar and her staff as well as former state representative Richard Carlson to discuss the proposed definitional changes. I also circulated drafts to the Kansas Automobile Dealers Association, as they have several members who sell these kinds of motorsports products. After a Q&A session with KDOR/DMV, I circulated comments to Polaris and made revisions, which we shared with KDOR/DMV in early January before our request for bill introduction was made. I do not believe KDOR/DMV has objections to our amendments.

In addition, the proposed definition updates are not proprietary to Polaris Industries. Other manufacturers of these products include John Deere, Honda and Yamaha, to name a few popular brands. We have shared our proposal with dealer-related associations and agriculture-related organizations with statehouse representation, as well as with the 22 Polaris dealers in Kansas, many of whom carry multiple lines of off-road and motorsports products (Polaris Dealer locations attached to testimony). To date we have not received any objections or expressed concerns in regard to the contents of SB 73.

By and large, we believe the proposed definitions to be noncontroversial on their face. However, it is appropriate for me to note that under K.S.A. 79-3606 (t), "work-site utility vehicles" are exempt from sales tax when purchased as farm machinery and equipment when properly certified to the dealer by the purchaser. Accordingly, there could be a fiscal note related to the increase in length for work-site utility vehicle definition change – as more vehicles in this category may be sold and eligible for the sales tax exemption in Kansas than prior to such a change.

If the Committee will indulge me a moment, I believe a brief discussion of the title and registration requirements for off-road vehicles is important in order to provide context to this issue.

Purchasers of off-road vehicles are required to obtain an off-road title from the State of Kansas. These vehicles are not registered. People who purchase these vehicles out-of-state are rarely subjected to being required to pay sales tax, as the out-of-state dealer typically does not have a nexus to Kansas and enforcement is difficult to achieve.

Our bill does not expand the sales tax exemption to "all-terrain vehicles" or "recreational off-highway vehicles."

We believe the spirit and intent of the agriculture exemption for work-site utility vehicles remains intact, as these vehicles meet the current definition except for modifications to currently-exempt vehicles that have led to the same vehicles being manufactured in longer in longer versions to meet the needs of the consumer.

Eliminating the length restriction could lead to increased sales in Kansas by motorsports dealers, or more likely, encourage a qualified agriculture-related purchaser to buy a product in Kansas that more appropriately meets their needs rather than from an out-of-state dealer.

In closing, Polaris Industries appreciates the opportunity to appear today in support of SB 73 and would respectfully request its favorable consideration. I am pleased to stand for questions.

WBD

Attachments

For more information on Polaris Industries, please refer to their website: www.polaris.com

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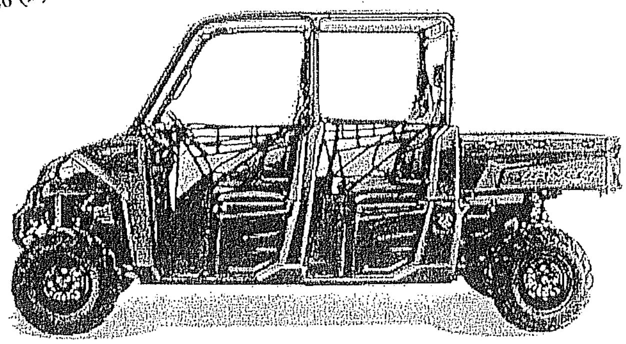
Current Law

K.S.A. 8-126 (ff) "Recreational off-highway vehicle



<u>Ranger XP900 Crew</u>

Width: 60"

Length: 148.5 "

Weight: 1,571 lbs.

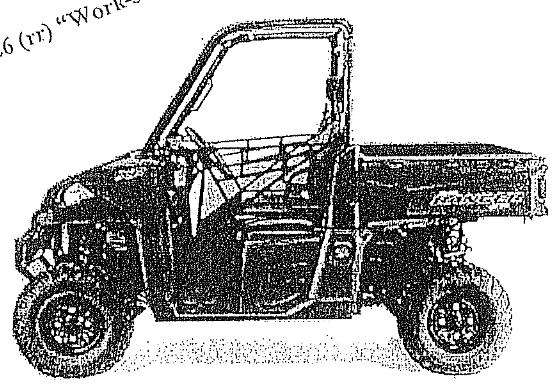
Four low-pressure tires

Steering wheel

Bench seat (capable of seating
6 passengers)

Bed for hauling materials

K.S.A. 8-126 (rr) "Work-site utility vehicle



<u>Ranger XP900 Full-size</u>

Width: 60"

Length: 116.5"

Weight: 1,325 lbs.

Four low-pressure tires

Steering wheel

Bench seat (capable of seating
3 passengers)

Bed for hauling materials

All Terrain Vehicles (ATVs)

ATVs are often used on a farm or ranch, however, ATVs are not farm machinery and equipment and are; therefore, subject to Kansas sales or use taxes, as are accessories for an ATV. An ATV is defined as:

> ... any motorized nonhighway vehicle 48 inches or less in width, having a dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires, and **having a seat designed to be straddled by the operator.** As used in this subsection, low-pressure tire means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 12 inches or less, and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer. (Emphasis added.)

A box blade that can be pulled by all terrain vehicles and garden tractors and is used to level dirt and gravel driveways and for the removal of snow is taxable.

Work-Site Utility Vehicles

The sale of a "work-site utility vehicle" that is equipped with a bed or cargo box for hauling materials may be purchased exempt from sales tax under the farm machinery and equipment sales tax exemption. K.S.A. 8-126 defines a *work-site utility vehicle* as:

> ... any motor vehicle not less than 48 inches in width and overall length including the bumper of not more than 135 inches; has an unladen weight including fuel and fluids **of more than 800 pounds; is equipped with four or more low pressure tires, a steering wheel, and bench or bucket-type seating allowing at least two people to sit side-by-side**; and may be equipped with a bed or cargo box for hauling materials. (Emphasis added.)

The same law provides that a work-site utility vehicle, equipped with a bed or cargo box for hauling materials, is included within the definition of *farm machinery and equipment or aquaculture machinery and equipment* [K.S.A. 7903606(t)]. To qualify for the farm machinery and equipment exemption, the following must apply.

1) The purchase must be of a work-site utility vehicle, as defined above that is equipped with a bed or cargo box for hauling materials, or for repair or replacement parts therefor, or services performed in the repair or maintenance thereon; **and,**
2) the work-site utility vehicle must be used only in farming, ranching, aquaculture production, farm and ranch work for hire, operation of a feed lot, nursery or for Christmas tree farming; **and,**
3) the retailer must retain in its records an Agricultural Exemption Certificate (ST-28F) completed by the purchaser. As an alternative to the exemption certificate, the purchaser may certify in writing on a copy of the invoice or sales ticket to be retained by the seller that the work-site utility vehicle will be used only in farming, ranching or aquaculture production.

Kansas

Business Taxes for the Agricultural Industry

Agriculture, as conducted in farming and ranching operations throughout the state, is the primary basis of the Kansas economy. Communities, regions, and the state as a whole are materially dependent upon agricultural endeavors and derive substantial financial benefit from the success of Kansas agriculture. Considering this state's heavy reliance on agriculture, Kansas law provides several sales tax exemptions for those engaged in the agricultural industry, but these tax exemptions are specific in nature and do not apply to all aspects of your business. This publication will help you understand how Kansas taxes apply to Kansas agribusiness. It will explain which items are taxable, which are exempt and how to properly claim the exemptions.

Also included is information about how to report and pay the taxes. By law, businesses are now required to submit their Sales, Compensating Use and Withholding Tax returns electronically. Kansas offers several electronic file and pay solutions – see page 20.

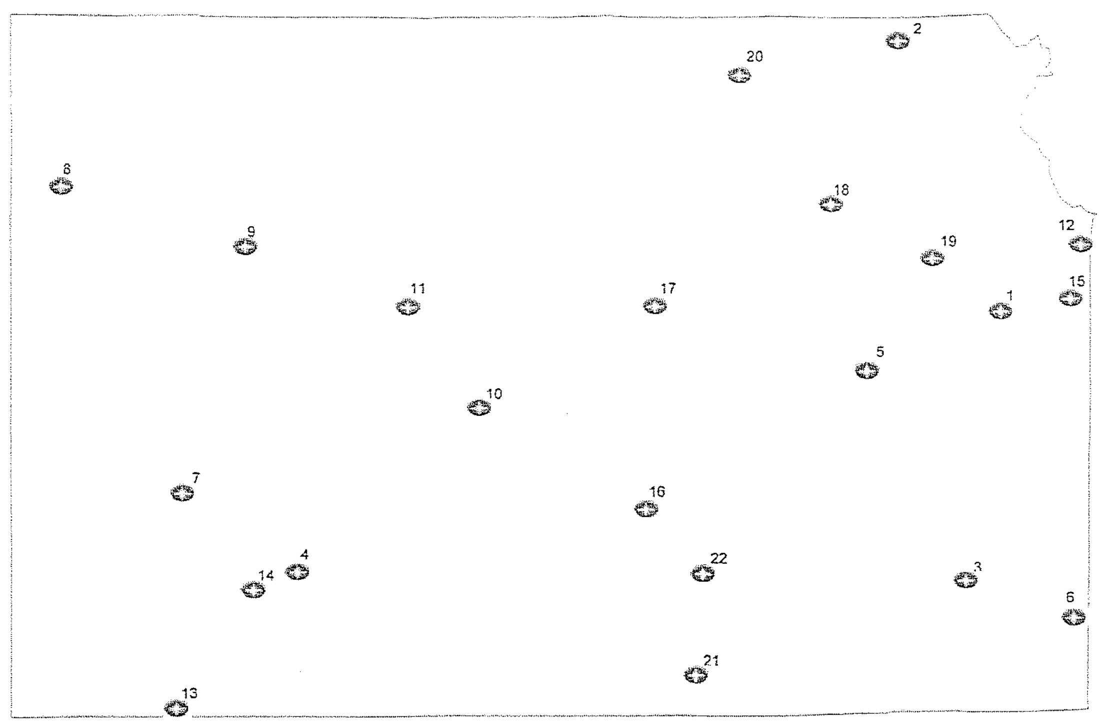
Use this publication as a supplement to KDOR's (Kansas Department of Revenue) basic sales tax publication, KS-1510, Kansas Sales and Compensating Use Tax.

WebTax.org

Kansas Department of Revenue

Pub KS-1550 (Rev. 1/14)

Kansas Polaris ATV/ROV Dealers



	Dealer Name	Dealer City
1	HERITAGE TRACTOR, INC.	BALDWIN CITY
2	DUFFER'S REPAIR & SUPPLY	BERN
3	KIRBY'S SUPERSPORTS	CHANUTE
4	AMERICAN IMPLEMENT	DODGE CITY
5	EXPRESS TIRE	EMPORIA
6	JAY HATFIELD MOTORSPORTS	FRONTENAC
7	GARDEN CITY POWERSPORTS	GARDEN CITY
8	AMERICAN IMPLEMENT	GOODLAND
9	BETTER BUILT TRAILERS, LLC	GRAINFIELD
10	STRAUB INTERNATIONAL	GREAT BEND
11	BOS MOTORSPORTS	HAYS
12	AUSTIN SALES INC.	KANSAS CITY
13	TRAILERS & TRAILS LLC	LIBERAL
14	COUNTRY FEEDS	MONTEZUMA
15	RIDENOW KANSAS CITY	OLATHE
16	GREAT PLAINS MOTORSPORTS	S HUTCHINSON
17	STRAUB INTERNATIONAL	SALINA
18	FLINT HILLS POWERSPORTS	ST GEORGE
19	HERITAGE TRACTOR, INC	TOPEKA
20	BRUNA IMPLEMENT CO	WASHINGTON
21	COUNTRYSIDE MOTORS	WELLINGTON
22	BIKERS EDGE CYCLE & LEATHER	WICHITA