

MINUTES OF THE HOUSE TOURISM AND PARKS COMMITTEE

The meeting was called to order by Chairperson Becky Hutchins at 3:30 p.m. on March 10, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Candy Ruff - excused  
Representative Clark Shultz - excused

Committee staff present:

Hank Avila, Legislative Research Department  
Mary Torrence, Office of Revisor of Statutes  
Lura Attig, Committee Secretary

Conferees appearing before the committee:

Senator Derek Schmidt  
Derenda Mitchell, Kansas Livestock Association  
Debra Brown, Red Rock Guest Ranch  
Marci Penner, Travel Industry Association of KS  
Terry Holdren, Kansas Farm Bureau  
Lynn Johnson, Kansas Trial Lawyers  
Representative Doug Patterson  
Matt Jordan, Kansas Department of Commerce

Others attending:

See Attached List.

The minutes of February 16, 18, 23, and March 3, were reviewed by the committee. A motion was made by Representative Morrison to adopt the minutes. Representative Merrick seconded the motion. The motion carried.

**Hearing on: SB 334 - Limiting liability of persons involved in agritourism.**

Hank Avila, Legislative Research Department, gave an overview of **SB 334**, beginning with the history of this bill: **SB 134** was introduced in the Senate Commerce Committee. It was passed there, then went on to the Senate floor where it passed 40-0. It was then sent to us (House Tourism and Parks) and we made some clarifying amendments. It went on to the House floor where it passed 86-39. It was sent to the Governor who vetoed it based on the liability issue. A motion to override the veto passed in the Senate 37-3, and failed in the House 72-51, therefore sustaining the veto.

He also briefed the Committee on the interim study, their conclusions and recommendations were (Attachment 1):

- “The Committee recommends that the Kansas Insurance Commissioner open a dialog with the Kansas insurance industry about the lack of liability insurance for farmers and ranchers who are developing an agritourism enterprise and report back to the appropriate standing committees during the 2004 Session. In addition, the Commissioner is asked to encourage Kansas insurance companies to assist in providing coverage.”
- “The Committee wishes to acknowledge Senator Schmidt’s proposed bill regarding limiting liability in agritourism. At this time, the Committee recommends that all of the interested parties come together to propose a cooperative bill early in the 2004 Session that addresses their differences. If there is no new legislation with significant consensus and support introduced by this group, the Committee recommends that the language from 2003 **SB 134** as presented to the Governor be reintroduced as the basis for discussion for agritourism during the 2004 Session. In addition, any agritourism bill sponsor is asked to consider including both entities and individuals in the definition of the operator.”

Chairperson Hutchins asked Mr. Avila when you gave the history of this bill, who did you say supported the bill by Senators Schmidt and Brownlee? Mr. Avila answered, the recommendation of the committee was that they endorse the idea of **SB 134** but recommend that all the entities get together to address the

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issues.

### **Proponents:**

Senator Schmidt spoke as a proponent to **SB 334 (Attachment 2)**. The time line on this bill goes back at least two years when Senators Schmidt and Morris introduced the bill in the Senate Agriculture Committee, legislation to address this subject, the liability issue with regard to agritourism promotion. The original bill had problems, and didn't get worked the first year. The next year, Senators Brownlee and Jordan became interested in the bill. It became **SB 134**. There was extensive work on the bill during that session in an attempt to get all parties on the same track. After the veto of the last session, and the override in the Senate and the failure to override in the House, the Governor related publicly, her support of agritourism. Saying that although she had vetoed the bill she was not opposed to agritourism. In the fall of 2003, during the Governor's annual farm tour, which is sponsored by the Kansas Farm Bureau, the Governor was asked about the liability agritourism issue. She stated that she was working with Kansas Farm Bureau to try to reach an agreement. A reporter from the Associated Press out of Wichita, wrote a story about the event and her story related that the Governor had reached out to Farm Bureau and was actively working on trying to develop a liability bill related to agritourism. Senator Schmidt does not believe there actually had been an overture made to Farm Bureau at that point in time. Senator Schmidt is certain there has been no ongoing effort by the administration to engage Farm Bureau or any of the other agritourism groups on this subject in the months since then. **SB 334** is now supported by the Farm Bureau and the Kansas Livestock Association. On the Senate side, the only conferees who testified in opposition were the Trial Lawyers. The basic concept is the domestic animal law, where it is required to give notice to warn patrons of the inherent risk, therefore there is no liability that attaches to the operator of the arena. The sign warns: You are assuming the risk inherent to this domestic animal activity etc. The law says if the signs are posted, notice has been given to the participants that they are assuming risks, therefore there is not liability that attaches to the operator of the arena.

Committee questions followed.

Representative Beggs asked, regarding a signed liability release form, is that a valid protection? Senator Schmidt replied, if you were my client, I would say you should get the form signed even though it may not work. Basic court law is you cannot waive liability for negligent acts, unless there is specific authority that allows you to. That is the specific authority we are proposing to create in this bill.

Representative Kauffman asked the Senator what are the major difference between **HB 2844** and **SB 334**. Senator Schmidt replied, there are two major differences, **HB 2844** has two broad components, one relates to a limitation on liability, which is parallel to **SB 334**, the other relates to tax credits, trying to make insurance more affordable to operators. Our bill has a substantially higher level of protection for landowners or operators. The competing proposal has an inherent negligence concept in it where you get in and litigate based on the facts, how much the land owner is responsible and how much the participant is responsible. Ours just says it is an assumption of risk. As long as the notice is given, the liability shifts.

Representative Novascone asked, is the bill constitutional? Senator Schmidt replied. It is a new argument being advanced this year by critics of liability limitation and the argument goes the Kansas Constitution does not allow us to do that. This issue has not been raised before in the years we have discussed this topic, and I would suggest it is "grasping at straws," trying to find new arguments. If it is true, we would have problems with not only this bill, but many others.

Chairman Hutchins stated that the House Tourism and Parks Committee had received **HB 2844** on February 12, which was very late in the first half of the session. We had only three meetings left and our agenda was full. We didn't have time to hear or work the bill. That bill, in essence, is gone.

Derenda Mitchell, Assistant Counsel, Kansas Livestock Association, spoke in support of **SB 334** and for the efforts of those who have worked to support agricultural heritage (**Attachment 3**). Kansas is uniquely suited for economic growth in the area of agritourism. Kansas Livestock Association will not support any amendment that weakens the current law in the recreational use statutes that were discussed in **SB 134** last year. Nor will we support any amendment that would dilute the protections proposed in **SB 334**. Agritourism protection should not be weakened by amendments by the legislature, by the courts, or by anyone seeking to undermine the protections offered under current law and under the proposals that have

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been hammered out in this bill. The point of this bill is to foster opportunity for cultural, educational, historical and recreational experiences. The point is not to create some sort of new injury recovery mechanism. Kansas Livestock Association supports broad protection and does not wish the current law lessened, removed, or substituted for a different set of liability requirements.

Committee questions followed.

Staff asked Derenda Mitchell if the Kansas Livestock Association approves of the amendment on page four. Miss Mitchell replied that she believes the Kansas Livestock Association proposed that amendment to clarify that there be no adjustment or change to the recreational use statute and that someone who qualifies for protections under both bills would not suffer any loss of protection.

Debra Brown, Proprietor of The Red Rock Guest Ranch spoke in support of **SB 334** (Attachment 4). She believes the language of this bill will help the agritourism business. Many farm families are struggling to hold on to their land. Often both parents are working full time off the farm, just to make ends meet. Agritourism is their opportunity to change these events. Liability issues are a large concern at the Red Rock Guest Ranch. She related stories of unpredictable animals and visitors that are perfect examples of why liability insurance should be readily available. Kansas has so much to offer. Many farmers and ranchers such as her and her husband, are willing to open up their land and their home, to share with others. This type of legislation would certainly give them that opportunity.

Marci Penner, representing the Travel Industry of Kansas, supports the bill (Attachment 5). It is her job as the Director of the Kansas Sampler Foundation to work with rural communities and rural people every day. It is her experience that many cannot find companies to write insurance for their agritourism enterprises. They must engage in a national search for an underwriter. She hopes this bill will encourage insurance companies to write affordable policies for agritourism.

Terry Holdren, Associate State Director, Kansas Farm Bureau, Governmental Relations, spoke in support of **SB 334** (Attachment 6). Members of Kansas Farm Bureau have supported limits on liability for many years. Kansas Farm Bureau's current policy supports legislation which will prevent any increased liability for landowners who invite people on their land to participate in agritourism activities. We opposed the bill last year because of concerns with the recreational use statute. The domestic animal law, which is the basis of **SB 334**, is the appropriate place for this type of legislation, those are the same types of activities that you would find people going to county fairs and animal shows to experience agriculture and to be involved in agriculture activities. That law with its notice requirement and limits on liability or limits which would result in liability only after a showing of willful conduct on the part of the operator are appropriate in this case. We are opposed to amendments which would weaken the liability provisions of **SB 334**. **HB 2844** that was in this committee does weaken the liability provisions. We are however, supportive of the concept of tax credits for insurance premiums if you would choose to add that to **SB 334**. Our members embrace the concept of agritourism.

Committee questions followed.

Representative Osborne asked Marci Penner had she discussed this problem with the Insurance Commissioner? She replied that she had a few years ago and was both discouraged and overwhelmed by the lack interest on the part of insurance companies. Later in the meeting Ms. Penner mentioned that she had not spoken personally with the Commissioner. Representative Osborne suggested that a meeting with the Insurance Commissioner, representatives of insurance companies and those in agritourism would be helpful to get over the insurance hurdle.

Representative Osborne asked Terry Holdren, in section 3, the description of activities, farming, ranching, natural or rural culture. Does that include all the items you previously discussed? Mr. Holdren believes it does cover those items. Representative Osborne asked, Is selling produce on a street corner part of this description? Mr. Holdren replied that he does not believe it is. It is when a person comes onto your property to buy the produce that is it considered agritourism.

Representative Kauffman asked Marci Penner if this bill passed, do you think the insurance companies would then be willing to insure? Ms. Penner replied that regarding the domestic animal act, there has been more willingness on the insurance companies' part to write for the people who have the warning

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signs. If this bill passes, we would use the warning signs and maybe the companies would be more willing to write our insurance. She also stated that she had not spoken to the insurance commissioner.

Terry Holdren addressed the Chairperson saying he may be able to answer some insurance questions even though Farm Bureau no longer owns an insurance company they are affiliated with insurance companies. When these companies were asked last year about insurance for agritourism, they did not reply with a solid answer.

Representative Morrison asked Marci Penner does the sign saying you are not responsible really work in court? Is the sign just a scare tactic? Ms. Penner replied that if the signage is backed up with legislation, it would certainly carry more weight in the courts. We currently have no history of agritourism litigation because it is a new type of enterprise. Rep Morrison asked have any agritourism groups tried to discuss as a group their insurance problems with the insurance commissioner? Ms. Penner, they are not receiving any assistance from the insurance industry. Ms. Debra Brown said the only insurance they could get is from Lloyd's of London and it is very expensive. We just have to tell ourselves that it is just the cost of doing business.

Chairperson Hutchins informed the Committee that Thomas Etheredge from The Prairie Rose Chuckwagon also could not find insurance locally and ended up with a New Hampshire company.

Representative Thull asked Terry Holdren, in your written testimony you state that Farm Bureau represents 40,000 farm and ranch operators throughout the state. What percentage of the Kansas agricultural operation do you insure? Terry Holdren replied that he cannot answer that question exactly, but would say probably the majority of the operations. Farm Bureaus insurance division is now located in Iowa. They sold their insurance

### **Opponent:**

Mr. Lynn Johnson, Kansas Trial Lawyers Association spoke in opposition to **SB 334 (Attachment 7)**.

Committee questions followed.

Rep. Schwab, asked Mr. Johnson to explain why he categorized agritourism with the farming and ranching, they are not the same and we aren't talking about immunity for farmers and ranchers, we are talking about agritourism. I am not buying the argument that we are giving immunity to the most dangerous activity.

Rep. Morrison asked Mr. Johnson regarding the signed agreement in the other states, is that working well? People and animals are unpredictable we need to find out how other states have worked this out.

Rep. Hayzlett asked, if someone signs a waiver, then gets injured, does that mean they can't sue the property owner? Mr. Johnson replied that is true just like SB 334 doesn't prevent someone from filing a lawsuit it just provides a defense. Rep. Hayzlett said did you state that people would stay away from Kansas because they don't want to sign a waiver. Mr. Johnson said he may have exaggerated to prove a point, but it could happen.

Rep. Osborne said that Mr. Johnson mentioned a contract in other states, in your testimony you are implying that those contracts do the same as our bill. We are using a bill instead of a written contract that must be signed every time one enters an agritourism operation. What is the difference? Mr. Johnson replied, this will become a statutory law as opposed to people making their own decisions in reaching a contract.

Rep. O'Malley asked, this bill was changed dealing only the inherent risk would your organization support the bill? Mr. Johnson said they probably would.

Rep. Beggs asked, would you expect that we incorporate a combination of liability release that this could indirectly be more palatable to an insurer? Mr. Johnson said yes.

### **Written:**

Testimony from Governor Kathleen Sebelius as an opponent to **SB 334 (Attachment 8)**.

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**Neutral:**

Rep. Doug Patterson has had clients who have had slight injuries while participating in agritourism and one in particular who received devastating leg injuries in a pumpkin patch, it is for her that he offers a balloon amendment to eliminate frivolous actions (Attachment 9).

Matt Jordan, Director of Community Development, Kansas Department of Commerce, is neutral (Attachment 10).

Rep. Morrison asked Matt Jordan if the Department had gone into other states to see how they have implemented agritourism? The Dept. Of Commerce consulted with an agritourism expert in Illinois. It would seem that liability is an issue but not more of an issue than any other business. The Department hopes to find an approach that doesn't unduly regulate these operators. In other states, it is generally considered a business liability issue. The Department believes that **HB 2844** is a solid approach.

Rep. Kauffman asked Rep. Patterson if the lady with the severe leg injuries sued? He answered, not yet. Rep. Kauffman continued, did the owner of the pumpkin patch enterprise stay in business? Rep. Patterson said that the man did open for the next pumpkin season.

Rep. Flaharty asked Mr. Jordan this bill requires the Department of Commerce to keep a list of agritourism enterprises. Will the public interpret it as the state having rules and regulations for quality, safety, doesn't it imply some standards? Mr. Jordan replied that while they would do their best to implement the law, they are not a regulatory agency and are unaccustomed to enforcing measures called for in this bill.

Chairperson Hutchins asked Mr. Jordan if he had gone before the Senate Commerce Committee with the same concerns? He did not recall who testified in that committee. She also asked Lynn Johnson if he had gone before the Senate Commerce Committee with any amendments? He answered, no. She asked if there were any amendments on the Senate floor dealing with these issues? He replied that there were amendments on the Senate floor and one was to change the word willful to wanton.

Terry Holdren replied to the Chair that amendment was also in the Senate Commerce Committee and that the intention was not that the Commerce Department develop new positions, but that they simply register the agritourism people that apply and help with promotional activities.

Chairperson Hutchins closed the hearing on **SB 334**.

The next meeting is Monday, March 15.

Committee adjourned at 5:30 pm.