

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 12, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Geraldine Flaharty - 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: none

Others attending: see attached list

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

An amendment proposed by Chairperson Hutchins was distributed (Attachment 1). Representative Hayzlett made a motion to discuss the amendment; Representative Merrick seconded the motion.

Staff member Mary Torrence explained that the amendment is not intended to make any substantive changes, but simply to clarify the definition of "recreational purpose," and to clean up the punctuation.

Representative Kauffman asked whether "member of the public" includes the farmer or rancher. Ms. Torrence replied that it does not; neither does it include an employee or family member. "Member of the public" means visitors to the land for recreation.

Representative Ruff asked about the amendment she was planning to propose, regarding people riding on agricultural equipment, whether this amendment would still be possible with the revised wording, or whether it was now irrelevant. Ms. Torrence said that the revised wording was intended to be technical only, not to make a substantive change; thus, Representative Ruff's amendment would still be possible.

Chairperson Hutchins distributed copies of K.S.A.58-3206, which addresses liability for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

Representative Kauffman made a motion for adoption of Chairperson Hutchins' amendment. Representative Merrick seconded the motion. The motion carried.

Representative Ruff requested a conceptual amendment that would include "riding on" agricultural equipment as an additional exception to the liability limitations. She requested that Gary White of the Kansas Trial Lawyers Association explain the conceptual amendment.

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Gary White explained that in the revised wording of page 1, line 40 of the bill, after “shall not include operation of”, they would propose adding the words “or riding upon”. The reason for this is that K.S.A.58-3206 provides immunity for negligent acts and wanton acts; it does not provide immunity for willful acts or malicious acts. The term “willful conduct” is defined by K.S.A.60-3401; “malicious” is also part of that statute, as is “wanton conduct.” “Willful conduct” is “an act performed with a designed purpose or intent on the part of the person to do wrong or to cause injury to another.” This means that the only way the exception applies is if you have a designed purpose or intent to injure somebody that’s riding upon your equipment.

Representative Ruff made a motion to discuss this conceptual motion. Representative Peterson seconded the motion.

Representative Hayzlett asked whether the proposed amendment would include hayrack rides. Mr. White replied that the amendment also proposes immunity for hayrack rides. Essentially, hayrack rides would be an exception to the exception, because they are specifically immune. Some examples of agricultural equipment are listed in the bill.

Representative Hutchins expressed concern that hayrack riding could fall under the “not limited to” phrase in the definition of agricultural equipment. Mr. White said that the hayrack riding was not fully addressed in the Senate, but that this proposed amendment would specifically allow hayrack riding.

Representative Osborne requested clarification of whether, as the bill stands, all equipment would be immune, but with the proposed amendment, there would be immunity only for hayrack riding. Mr. White said this is the case.

Representative Schwab expressed opposition to the amendment, since riding in a combine, which is completely enclosed and goes slower than most cars, whereas on a hayrack, the riders are out in the open and can easily slip off the hay.

Chairperson Hutchins asked whether anyone in the gallery would like to speak, since she allowed Mr. White to speak.

Derenda Mitchell of the Kansas Livestock Association commented that the proposed amendment confuses and obfuscates the law. A hayrack ride is agricultural equipment. She commented that agricultural equipment has passenger seats, and riding on a combine can be highly educational in introducing children to agricultural processes.

Staff member Hank Avila asked whether extension services such as 4-H or FFA provide safety training for combine operators. Leslie Kaufman of the Kansas Farm Bureau replied that they do; in fact, one division of the KFB is devoted to education and safety activities, some of which are conducted by extension groups.

Ms. Kaufman also commented that the KFB would concur with the KLA in opposing the amendment.

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Manufacturers design much of this equipment for safety, and many precautions are built into the equipment. This amendment would go against the intent of the bill, which is to promote opportunities to view agriculture first-hand; that would prevent the use of a vehicle that was designed to accommodate a passenger.

Representative Peterson asked whether there is any place for a passenger on implements such as a bailer, a plow, or a drill. Ms. Kaufman replied that this once was common, but not on currently manufactured equipment.

Representative Peterson asked whether this amendment provides more or less liability. Ms. Kaufman replied that the proposed amendment would actually weaken the bill in terms of protection for the farmer.

Representative Schwab asked whether there are federal safety standards and regulations on this equipment. Ms. Kaufman replied that there are many safety requirements on the equipment, but she is not sure which of these are imposed by the federal government and which by the manufacturing industry.

Representative Shultz asked whether the Kansas Farm Bureau supports this bill as amended. Ms. Kaufman replied that the KFB will not actively oppose the bill, but that they still have some reservations. However, it is far better now than how it began. Also, if Representative Ruff's amendment were attached, the KFB would actively oppose the bill.

Representative Ruff commented that there is no guarantee that the equipment to be used is today's modern equipment, with all the current safety features. Not all farmers are as responsible as we would like, and to grant blanket immunity to all farmers, regardless of how irresponsible they might be, defies common sense.

The conceptual amendment moved by Representative Ruff and seconded by Representative Peterson failed.

Representative Morrison made a motion to recommend SB 134 favorable for passage as amended. Representative O'Malley seconded the motion. The motion carried. Representative Merrick will carry the bill.

Chairperson Hutchins informed the committee of next week's plans:

Monday: Meeting on call of the chair

Wednesday: Hearing on **SB 221 - Creates the southeast Kansas quail working group stamp.**

Chairperson Hutchins called the attention of the committee to a brochure that was distributed (Attachment 2) on the Kansas Field Conference scheduled for June 4-6, 2003. Among proposed agenda for this conference are these topics, which may be of interest to the committee: "Nature Tourism and Recreation" and "Wyandotte County Lewis and Clark Task Force."

Chairperson Becky Hutchins adjourned the meeting at 4:24 p.m.