

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 9, 2004, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Allie Devine, Vice President and General Counsel, Kansas Livestock Association
Lynn Johnson, Kansas Trial Lawyers Association
Dale Blasi, Professor and Extension Beef Specialist, Kansas State University

Others attending:

See attached list.

Discussion and action on HB 2530 - Removal of officers of cooperative agricultural marketing association by board of directors.

Gordon Self explained proposed amendments to HB 2530 discussed at the hearing on the bill. The first amendment would restore the language "from their number" on line 15. The second amendment would strike the word "majority" on line 29. Rather than define a majority as a majority of the board of directors present or a majority of the entire board, this language will allow each entity to define a majority in their individual bylaws. The third amendment would add clarifying language on line 31: "Nothing in this subsection shall be construed as removing from the board of directors any such officer removed from such office pursuant to the provisions of this subsection." Representative Powell, seconded by Representative Gatewood, moved to adopt these amendments to HB 2530. The motion carried.

Representative Compton moved to recommend HB 2530, as amended, favorable for passage. The motion was seconded by Representative Schwartz. The motion passed.

Allie Devine, Vice President and General Counsel, Kansas Livestock Association, reported that at their 2003 convention, their members expressed concern about the legal implications of a mandatory animal identification system. She said that **HB 2594** was an effort to clarify what duty of care a producer must follow. She stated that it is unclear from their legal research exactly what duty of care a producer of livestock owes to consumers of meat products. Case law from other jurisdictions indicates that, because a live animal is not a "fixed product" in that it may still change, it is not a product. However, when processed, that animal becomes a product.

Since the producer's role is limited to supplying the animal, the Kansas Livestock Association is advocating that the producer's duty of care to the consumer through the preparation of livestock and subsequent meat products be that of "ordinary care" or that of customary and ordinary due diligence in the production of that animal. They further advocate that if the livestock and subsequent meat products have been inspected and passed under state or federal laws, that such approval provides a presumption that the producer has met the standard of ordinary care. She acknowledged that the current language in **HB 2594** is confusing and said they are working with other interested parties to develop appropriate language. (Attachment 1)

Lynn Johnson, representing the Kansas Trial Lawyers Association, provided information on product liability law. He stated that a live animal is not a product, that there are no Kansas cases where a Kansas producer of livestock has ever been held liable for personal injury or death under any legal theory whether it be negligence, breach of implied warranty, or strict liability. The Kansas livestock producer is essentially the producer of a raw product. He explained that a producer of a raw product in manufacturing is not held liable for the ultimate product, unless there is a defect in that raw product when it is sold to the processor. He questioned the need for legislative protection of the livestock producer at this point in time as most of the meat food product liability cases arise during processing. He acknowledged that the issue of mad cow disease raises the point that the disease may be in existence at the time of sale to the processor. This is where the

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Kansas Trial Lawyers Association may disagree there should be any type of immunity. He stated that if it is "ordinary care" that is being proposed, that is fine because that is what the law of negligence is now.

The Kansas Trial Lawyers Association will be working with the Kansas Livestock Association to draft legislation, but will oppose any bill that will provide total immunity for producers. He stated that any bill that is passed is only going to affect Kansas livestock producers. If a consumer eats something that causes him to become deathly ill and it turns out that meat product came from Wyoming or Montana, this bill could provide immunity to that producer in Wyoming or Montana to the detriment of the Kansas meat consumer. This bill will not affect Kansas livestock producers that sell their livestock or meat products in Nebraska, Colorado, or where ever. The laws in those states would have effect. The Kansas Trial Lawyers Association is concerned that Kansas meat consumers would get the short end of the stick, and Kansas livestock producers would not really be helped all that much. He noted that other states do not have any such laws.

Chairman Johnson appointed a subcommittee to work on **HB 2593** - establishing an animal identification program. Members on the subcommittee will be Representative Johnson, Representative Feuerborn, Representative Kassebaum, Representative Miller, and Representative Schwartz. Their first meeting is scheduled on adjournment of the House Agriculture Committee on Wednesday, February 11.

Dale Blasi, Professor and Extension Beef Specialist, Kansas State University, gave a power point presentation on beef identification issues and outlined the United States Animal Identification Plan that defines the standards and framework for implementing and maintaining a phased-in national animal identification system for the United States. The USAIP goal is a traceable system that can identify all animals and premises potentially exposed to an animal with a Foreign Animal Disease within 48 hours after discovery. The USAIP implementation plan (Version 4.1) requires premises identification by July, 2004; individual or group/lot identification by July, 2005, for interstate movement; and by July, 2006, for all cattle entering both interstate and intrastate commerce; and enhanced tracking (RFID technology) in slaughter plants by July, 2005, and in markets by July, 2006.

He discussed the work they are doing at Kansas State University in regard to electronic identification of cattle. He explained that electronic identification provides the linkage necessary for converting data into accessible and useable information with greater accuracy and timeliness. He distributed copies of *A Guide for Electronic Identification of Cattle*, available from Kansas State University Agricultural Experiment Station and Cooperative Extension Service, to provide an overview and describe the components necessary to implement an individualized animal identification system. (Attachment 2)

The meeting adjourned at 5:00 p.m. The next meeting is scheduled for February 11, 2004.