

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on March 9, 2011, in Room 159-S of the Capitol.

All members were present.

Committee staff present:

Tamera Lawrence, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Heather O'Hara, Kansas Legislative Research Department
Judy Seitz, Committee Assistant

Conferees appearing before the Committee:

Representative Carl Holmes, 125th District
Chris Wilson, Deputy Secretary, Kansas Department of Agriculture (KDA)
Derrek Marteney, Kansas Nursery Landscape Association

Others attending:

See attached list.

Chairman Taddiken noted that there were minutes for the February 15 and 16 meeting which will be acted on later.

Chairman Taddiken opened the hearing on **HB 2184--Including noncommercial aviation use as a recreational purpose for the purposes of premises liability.**

Tamera Lawrence, Office of the Revisor of Statutes, reviewed **HB 2184**. She stated this bill amends a law dealing with the liability of landowners who open up their private property to non commercial aviation.

Ms. Lawrence offered to take questions.

Representative Carl Holmes, 125th District, testified in support of **HB 2184** (Attachment 1). He said this bill adds noncommercial aviation activities to the definition of recreational purposes to the law dealing with the liability of landowners who choose to open up their private property to recreational vehicles. Representative Holmes also said this proposed legislation applies to the land or property owner, not the aircraft owner.

Representative Holmes offered to stand for questions.

Written testimony supporting **HB 2184** was furnished by John T. Smith, Liberal (Attachment 2).

The hearing on **HB 2184** was closed.

A motion to pass **HB 2184** favorably out of Committee was made by Senator Teichman. Motion was seconded by Senator Love. Motion carried.

Chairman Taddiken opened the hearing on **Sub. for HB 2271--Amending provisions relating to plant pest inspection and regulation.**

Ms. Lawrence reviewed **Sub. for HB 2271**. She said this bill amends various provisions of the Kansas Plant Pest Act and clarifies authority given to the Secretary of Agriculture or the Secretary's designee.

Ms. Lawrence offered to take questions.

Chris Wilson, Deputy Secretary, Kansas Department of Agriculture (KDA), presented statements in support of **Sub. for HB 2271** (Attachment 3). She stated that this bill would update and strengthen the Plant Pest and Agriculture Commodity Certification Act so that the KDA can protect the Kansas economy through excluding or controlling harmful insects, plant diseases and weeds; ensuring Kansas plants and plant products entering commerce are free from quarantine pests and providing customers with inspection

CONTINUATION SHEET

Minutes of the Senate Agriculture Committee at 8:30 a.m. on March 9, 2011, in Room 159-S of the Capitol.

and certification services.

Ms. Wilson took questions from the Committee.

Jeff Vogel, Plant Protection and Weed Control Program Manager, KDA and Rick Scheufleur, Staff Attorney, KDA, answered questions from the Committee.

Derrek Marteney, Kansas Nursery Landscape Association, appeared in support of Sub for HB 2271. (Attachment 4) He said this bill would provide for uniform requirements of plant movement documentation and gives authority to eradicate a pest in the case of non-compliance by a plant dealer. Mr. Marteney stated concerns with this proposed bill regarding the need to make violations a felony, which would give authority to pursue out of state offenders and it does not make provisions for more inspectors in the field.

Mr. Marteney stood for questions.

Chairman Taddiken said that the hearing for Sub for HB 2271 will be continued to Tuesday, March 15.

Senator Schmidt made a motion to approve the minutes of the February 15 and 16 meeting; seconded by Senator Francisco. Motion carried.

Senator Ostmeyer moved to pass HB 2205--Continuing the use of weights and measures standards out favorably. The motion was seconded by Senator Bruce. Motion carried.

Senator King made a motion to adopt an amendment to HB 2282--Lodging inspections and food safety fees which would remove the cap on licenses fees (Attachment 5). The motion was seconded by Senator Francisco. The amendment was adopted.

Senator Francisco then moved that HB 2282 be reported out favorably as amended. The motion was seconded by Senator Schmidt. Motion passed.

The next meeting is scheduled for March 15, 2011.

The meeting was adjourned at 9:28 a.m.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 9, 2011

[illegible]

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HB 2184

Adds "noncommercial aviation activities" to definition of "recreation purposes" to law dealing with liability of landowners who choose to open up their private property to recreational activities.

Noncommercial aviation activities

Proposed legislation applies to land or property owner, not aircraft owner

FAA requires prior permission of property owner before landing on private airports except in an emergency

State of Maine has passed similar legislation (same wording as this proposal)

Tennessee has same type of legislation

Airports would probably be grass landing strip

This legislation favored by AOPA

This legislation helps the general aviation industry in Kansas

I'll stand for questions

Senate Agriculture Committee
3-9-11
Attachment 1

JOHN T. SMITH

Land planning, development & management # investments # real estate brokerage
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February 26, 2011

Senate Agriculture Comm.
Sen. Mark Taddiken, Chairman
State Capitol, Room 223-E
Topeka, KS 66612

Re: **House Bill 2184**

Sen. Mark Taddiken, Chm.
Committee Members,

I understand the above referenced bill has passed the House and been sent to the Senate for consideration. It addresses limiting liability of property owners for certain activities in order to encourage private land owners to make land available for public recreational purposes. Specifically, this bill includes noncommercial aviation activities in a long list of other recognized recreational activities.

As an active and currently licensed pilot, I have been flying now for almost 50 years. I enjoy the opportunity to attend fly-ins at both paved and grass, public and private, landing strips for the social and recreational benefits it provides. Amending this bill to include aviation activities almost seems as if to be correcting an oversight from its initial enactment, as there seems little distinction in my mind between, say, walk-in hunting, pleasure driving (dune buggies or motor bikes?), boating, water skiing, or numerous other of the activities listed.

I would **urge the committee to endorse this bill**, as a means of facilitating more locations and opportunities for recreational activities in our state.

Sincerely,



John T Smith

Senate Agriculture Committee
3-9-11
Attachment 2



Dale A. Rodman, Secretary

Office of the Secretary
Kansas Department of Agriculture

Sam Brownback, Governor

**Testimony on House Bill 2271
to
The Senate Agriculture Committee
by Chris Wilson
Deputy Secretary
Kansas Department of Agriculture
March 9, 2011**

Good morning, Chairman Taddiken, and Members of the Committee. I am Chris Wilson, Deputy Secretary of the Kansas Department of Agriculture, and I am here in support of House Bill 2271. The purpose of HB 2271 is to update the Plant Pest and Agriculture Commodity Certification Act. This is the law that gives authority to the Department of Agriculture to regulate plant pests, live plant dealers, plants and plant products and commodity certification. The purpose of the live plant dealer licensing function is to ensure that all live plants sold in Kansas are not infested with dangerous plant diseases, insects, or other damaging plant pests.

Plant Protection and Weed Control staff work to ensure the health of the state's native and cultivated plants by excluding or controlling destructive pests, diseases and weeds. Staff examine and analyze pest conditions in crop fields, rangelands, greenhouses and nurseries. Action taken to control potential infestations of new pests, whether they are insects, plants diseases or weeds, is beneficial to the economy and the environment.

The mission of this program is to:

- Exclude or control harmful insects, plant diseases and weeds;
- Ensure Kansas plants and plant products entering commerce are free from quarantine pests;
- Provide customers with inspection and certification services.

The Plant Protection Program staff and our legal section have been working over the past several months and with stakeholder groups on this revision. There were two initial motivating factors for this revision. One was consideration of a fee increase, with some industry groups supporting it and some opposing, so we decided not to request a fee increase at this time. As you are probably aware, the Department of Agriculture is funded with a mix of fee, federal, SGF and SWP funds. Through the budget cuts in recent years, Department of Agriculture staff has been reduced by roughly 1/3. The percentage of State General Funds of the Department's budget has been reduced from 55% in 2001 to 26% for FY 2012.

This program is one that has been reduced due to layoffs, which has increased the territory of the remaining field staff, and reduced our ability to carry out program responsibilities and to respond to requests for inspections. The timely completion of inspection and certification activities is critical for smooth and expeditious movement of commodities to foreign and domestic destinations.

*Senate Agriculture Committee
3-9-11
Attachment 3*

We are committed to doing the best job possible with the resources available. You may have heard or read in the news this week that the Division of the Budget is undertaking an analysis to determine the actual cost of inspections so that the Legislature and the agencies can have that information available for considering the mix of fee and SGF funding for programs and inspections. The first two departments that are being analyzed are the Department of Labor and the Department of Agriculture. This analysis will give us all the best data possible on which to consider changes in the future.

A second motivating factor for the bill was concern about fly-by-night out-of-state plant dealers bringing plant pests into Kansas. Stiffer penalties, including criminal penalties, were considered, as current penalties do not give us a way to enforce the Act against out-of-state persons. Increasing criminal penalties was not something the House committee wanted to do, but they increased the civil penalty fine.

In the process of reviewing the Act, there were several technical changes and improvements we wanted to make and those are embodied in HB 2271. The amendments in HB 2271 which we are proposing include clarifying definitions; clarifying that those regulated are those engaging in the live plant business (page 1); correcting spellings and eliminating unnecessary definitions (page 2); clarifying actions relative to inspection and monitoring for plant pests (p. 2, line 40).

On page 3, the secretary is allowed to apply to a court for access to property for the purpose of plant pest inspections, except private dwellings. Currently the secretary is allowed to dispose of plant pests upon notice to an owner as necessary to prevent the spread of plant pests. This bill allows the department to treat the plant pest if the owner fails to do so and to assess expenses incurred.

On page 4, the bill provides for establishing diagnostic and identification fees, which are not now provided for under the law.

Currently, the law requires all live plant dealers to be licensed but those under \$10,000 in sales are not required to pay a licensing fee. This costs the Department about \$6 per license issued. This bill (p. 5) would instead exempt those under \$10,000 in sales unless they import or export plants into or from the state, and then they would have to pay the fee and be licensed.

On page 6, a license may be revoked, after notice and opportunity for a hearing, if the applicant or licensee does not comply with the law. Live plants brought into the state or shipped within the state by a live plant dealer, shall be tagged or accompanied by documentation. That's current law, we are just updating that language.

On page 7, jurisdiction is provided to the district courts to issue temporary restraining orders in order to stop the movement of live plants with plant pests.

Also on page 7, line 38, the civil penalty is increased from not less than \$100 to no more than \$2000 per violation. This is an increase from no more than \$1000 but is still substantially less than most other maximum civil penalties under the laws we administer, which are at \$5000.

An example of the types of issues this program is dealing with at this time is the Thousand Cankers of Walnut Disease. Thousand Cankers poses a serious threat to the health of black

walnut trees. Walnut trees are important because they produce nuts and highly desired wood. Thousand Cankers disease of walnut is a progressive disease that kills a tree within two to three years after initial infection.

The Kansas Department of Agriculture, Kansas Forest Service and K-State Research and Extension are deeply concerned that if it reaches the native range of black walnuts in central and eastern Kansas, we may lose this tree in our urban and native forests.

The Kansas Department of Agriculture enacted an exterior quarantine, effective, July 20, 2010, regarding Thousand Cankers Disease of Walnut. Current states where Thousand Cankers Disease of Walnut is detected included: Arizona, California, Colorado, Idaho, New Mexico, Tennessee, Oregon, Utah and Washington.

The Plant Pest and Agriculture Commodity Certification Act is designed to protect the Kansas economy through excluding or controlling harmful insects, plant diseases and weeds; ensuring Kansas plants and plant products entering commerce are free from quarantine pests; and providing customers with inspection and certification services, including the state biotechnology industry.

HB 2271 updates this Act and strengthens the tools for the Department of Agriculture to accomplish this mission.

I will respond to questions at the appropriate time.

HB2271 Plant Pest Inspection and Regulation

Derrek Marteney-Kansas Nursery Landscape Association

Primary Supports:

Provides for uniform requirement of plant movement documentation. (Sec 8)

Gives authority eradicate a pest in the case of non-compliance by a plant dealer. (Sec 3)

Primary Concerns:

Needs to make willful violations a felony, which would give authority to pursue out of state offenders. (Sec 10)

Does not make provisions for more inspectors in the field.

Conclusion: The KNLA supports this legislation but feels it accomplishes very little to fix the gaps in regulations now in place. The original bill provided that willful violations could be felonies. That is the one provision that truly could be a benefit to the State by giving the power to prosecute across state lines. Currently, someone can come from out of state, sell plants in Kansas while not being compliant with our current protections, bring with them a regulated pest, leave the State and the burdens left by the pest fall in the laps of Kansans. The felony charge may not prevent this from ever happening, but gives Kansas an opportunity to deter it from becoming a frequent problem. The House chose strike this and return it to a misdemeanor which means the burden of compliance to the regulations will only be enforceable on Kansas live plant dealers. The other concern I have that is not addressed is the lack of guarantee of field inspectors, the life blood of Kansas nurseries that ship out of state or bid on government landscape contracts.

Senate Agriculture Committee
3-9-11
Attachment 4

Senator King

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2282

By Committee on Agriculture and Natural Resources Budget

2-11

1 AN ACT concerning lodging inspections; relating to lodging inspection
2 fees; amending K.S.A. 2010 Supp. 36-502, 36-518 and 74-591 and
3 repealing the existing sections; also repealing K.S.A. 2010 Supp.
4 36-512.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. There is hereby created the lodging fee fund.
8 The secretary shall remit all license fees received by the secretary
9 under the provisions of K.S.A. 36-502, and amendments thereto,
10 and all license renewal fees for lodging establishments under K.S.A.
11 36-505, and amendments thereto, to the state treasurer in
12 accordance with the provisions of K.S.A. 75-4215, and amendments
13 thereto. Upon receipt of each such remittance, the state treasurer
14 shall deposit the entire amount in the state treasury to the credit of
15 the lodging fee fund. All expenditures from the lodging fee fund
16 shall be made in accordance with appropriation acts upon
17 warrants of the director of accounts and reports issued pursuant to
18 vouchers approved by the secretary of agriculture or by a person
19 designated by the secretary. This section shall be a part of and
20 supplemental to the food service and lodging act.

21 ~~Section 1.~~ Sec. 2. K.S.A. 2010 Supp. 36-502 is hereby amended to
22 read as follows: 36-502. (a) It shall be unlawful for any person to
23 engage in the business of conducting a lodging establishment unless
24 such person shall have in effect a valid license therefor issued by the
25 secretary of agriculture. Applications for such licenses shall be made on
26 forms prescribed by the secretary, and each such application shall be
27 accompanied by the appropriate license fee required by subsection (c)
28 of this section. Prior to the issuance of any such license, the secretary
29 shall inspect or cause to be inspected the lodging establishment
30 designated in the application, to determine that it complies with the
31 standards for lodging establishments promulgated pursuant to this act.
32 If such lodging establishment is found to be in compliance, the
33 secretary shall issue the license. If the application for license is denied,

Senate Agriculture Committee
3-9-11
Attachment 5

1 the secretary shall give written notice thereof to the applicant, stating
2 also that the applicant is entitled to a hearing thereon if a written
3 request therefor is filed with the secretary within 20 days of the date
4 such notice is sent. Such hearing shall be held in accordance with the
5 provisions of the Kansas administrative procedure act.

6 (b) Each license shall designate whether the licensed lodging unit
7 is a hotel, rooming house or boarding house. Any person obtaining a
8 license to engage in the business of conducting a rooming house or
9 boarding house shall not have the right to use the name "hotel" in
10 connection with such business. Every license issued hereunder shall be
11 displayed conspicuously in the lodging establishment for which it is
12 issued, and no such license shall be transferable to any other person or
13 location. Whenever any such license is lost, destroyed or mutilated, a
14 duplicate license shall be issued to any otherwise qualified licensee
15 upon application therefor and the payment of a fee in the amount of \$3
16 \$5.

17 (c) The fee for a license to conduct a lodging establishment in this
18 state for all or any part of any calendar year shall be \$30, except that
19 the fee for any lodging establishment containing 10 sleeping rooms
20 shall be \$35 \$40 and for every additional 10 rooms therein, an
21 additional fee of \$5 \$10 shall be charged. *The license fee shall not*
22 *exceed \$300.* All lodging establishments which are ~~new~~, newly
23 constructed, *newly converted to use as a lodging facility* establishment
24 or have a change of ownership shall pay an application fee which may
25 be adjusted in accordance with the type of establishment or based on
26 other criteria as determined by the secretary, but in no event shall any
27 application fee exceed \$100 \$200 in addition to the license fee.

28 (d) Any person who, on the effective date of this act, has a valid
29 license to operate a hotel or rooming house shall be a licensee under the
30 provisions of this act, and any such license is hereby deemed to be a
31 license to operate a lodging establishment issued under the provisions
32 of this act.

33 Sec. 2-3. K.S.A. 2010 Supp. 36-518 is hereby amended to read as
34 follows: 36-518. (a) The secretary shall inspect or cause to be inspected
35 every lodging establishment in this state. *Any lodging establishment in*
36 *this state shall be inspected upon receipt of a complaint indicating that*
37 *a lodging establishment does not comply with the applicable standards*
38 *promulgated in the rules and regulations of the secretary.* ~~For such~~
39 ~~inspections~~ The secretary or the secretary's lawful agent shall have the

1 right of entry and access thereto, at any reasonable time.

2 (b) Whenever, upon inspection, it is determined that any lodging
3 establishment does not comply with the applicable standards
4 promulgated in the rules and regulations of the secretary, the secretary
5 shall give written notice to the owner, proprietor or agent in charge of
6 such establishment of the changes or alterations necessary to comply
7 with such standards.

8 (1) The notice shall order the establishment to comply with the
9 applicable standards within a period of time specified in the notice,
10 which shall be not less than 10 days, except that a shorter period of
11 time may be provided in the notice whenever the secretary believes it
12 essential to protect the public health and safety.

13 (2) The notice also shall state that the license for such
14 establishment shall be subject to suspension or revocation for failure to
15 comply with the applicable standards within the time specified.

16 (3) The licensee of any establishment given a notice pursuant to
17 this section may apply to the secretary for an extension of the time
18 specified in the notice. The secretary shall review such application and
19 may grant or deny such application or modify the provisions of the
20 notice with respect to the time for compliance with any of the
21 particulars stated in the notice.

22 (c) Upon reinspection of any lodging establishment given a notice
23 pursuant to this section, if it is determined that such establishment does
24 not comply with the applicable standards promulgated in the rules and
25 regulations of the secretary, the secretary may suspend or revoke the
26 license issued for such establishment. If the secretary suspends or
27 revokes the license, the secretary shall send written notice to the
28 licensee that the license for such establishment will be suspended or
29 revoked, effective 20 days after the date such notice is sent, unless
30 within such time the licensee files with the secretary a written request
31 for a hearing on the proposed suspension or revocation. All hearings
32 pursuant to this section shall be conducted in accordance with the
33 provisions of the Kansas administrative procedure act.

34 (d) The secretary is authorized to receive lodging inspection
35 reports from qualified individuals, private entities or public entities to
36 determine compliance with lodging standards promulgated pursuant to
37 the food service and lodging act, and amendments thereto. The
38 secretary is authorized to promulgate such rules and regulations as are
39 necessary to receive such inspection reports. Such rules and regulations

1 shall be promulgated on or before July 1, 2010.

2 (e) This section shall be a part of and supplemental to the food
3 service and lodging act.

4 Sec. 3.4. K.S.A. 2010 Supp. 74-591 is hereby amended to read as
5 follows: 74-591. ~~(a) The balances of all funds or accounts thereof~~
6 ~~appropriated or reappropriated for the department of health and~~
7 ~~environment relating to the powers, duties and functions transferred by~~
8 ~~this act are hereby transferred within the state treasury to the Kansas~~
9 ~~department of agriculture and shall be used only for the purpose for~~
10 ~~which the appropriation was originally made. On and after October 1,~~
11 ~~2004, all such balances shall be deposited in the food safety fee fund~~
12 ~~and may be used to carry out the responsibilities and duties of the~~
13 ~~division of food safety of the Kansas department of agriculture, as~~
14 ~~established by this act.~~

15 ~~(b)~~(a) There is hereby created the food safety fee fund. The
16 Kansas department of agriculture shall remit all moneys received by or
17 for it from fees, and charges ~~or penalties from the powers, duties and~~
18 ~~functions transferred to and imposed upon the department of~~
19 ~~agriculture and secretary of agriculture pursuant to K.S.A. 74-581 and~~
20 ~~74-5,104, and amendments thereto, except moneys deposited to the~~
21 ~~credit of the lodging fee fund in the state treasury to the state treasurer~~
22 ~~in accordance with the provisions of K.S.A. 75-4215, and amendments~~
23 ~~thereto. Upon receipt of each such remittance, the state treasurer shall~~
24 ~~deposit the entire amount in the state treasury to the credit of the food~~
25 ~~safety fee fund. All expenditures from the food safety fee fund shall be~~
26 ~~made in accordance with appropriation acts upon warrants of the~~
27 ~~director of accounts and reports issued pursuant to vouchers approved~~
28 ~~by the secretary of agriculture or by a person or persons designated by~~
29 ~~the secretary.~~

30 (b) *On July 1, 2011, the director of accounts and reports shall*
31 *transfer all moneys in the food service inspection reimbursement fund*
32 *and the food inspection fee fund to the food safety fee fund. On July 1,*
33 *2011, all liabilities of the food service inspection reimbursement fund*
34 *and the food inspection fee fund are hereby imposed on the food safety*
35 *fee fund. The food inspection fee fund and the food service inspection*
36 *reimbursement fund are hereby abolished. Upon the abolition of those*
37 *funds, any reference to those funds of any designation thereof, in any*
38 *statute, contract or other document shall mean the food safety fee fund.*

39 Sec. 4.5. K.S.A. 2010 Supp. 36-502, 36-512, 36-518 and 74-591

HB 2282—Am. by HC

5

1 are hereby repealed.

2 Sec. ~~5-6~~. This act shall take effect and be in force from and after
3 its publication in the statute book.

4