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MEMORANDUM

To: Senate Committee on Agriculture and Natural Resources
From: Office of Revisor of Statutes
Date: February 14, 2024
Subject: SB 389—Farm animal and field crop and research facilities protection act

Senate Bill 389 would continue to prohibit entering or remaining on and knowingly making false statements to gain access to animal facilities and field crop production areas and would clarify the penalties for violations therefor. Additionally, the bill would remove the unconstitutional provisions regarding intent to destroy property in the farm animal and field crop and research facilities protection act.

Currently, the farm animal and field crop and research facilities protection act prohibits: (1) Persons from acquiring or exercise control over an animal facility without effective consent of the owner and with intent to damage; (2) recording, attempting to record or trespassing to record on an animal facility property without effective consent of the owner and with the intent to damage; and (3) trespassing on an animal facility without effective consent of the owner and with the intent to damage the enterprise. The 10th Circuit Court of Appeals in *Animal Legal Defense Fund v. Kelly* held that these provisions unconstitutionally violated the First Amendment of the Constitution of the United States. The court stated that such provisions “concern speech because they include deception as a possible element and are viewpoint discriminatory because they only apply to persons who intend to damage the enterprise of an animal facility.”¹

SB 389 would amend the farm animal and field crop and research facilities protection act to remove the unconstitutional provisions while still prohibiting entering or remaining on and knowingly making false statements to gain access to animal facilities and field crop production areas and removing the intent to destroy property. Additionally, the bill would clarify the penalties for any violations of the act.

SB 389 would take effect on July 1, 2024, upon publication in the statute book.

¹ *Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219, 1224 (10th Cir. 2021).