



Since 1894

To: Committee on Agriculture and Natural Resources
Rep. Sharon Schwartz, Chair

From: Myndee M. Reed, Kansas Livestock Association

Re: **SB 168 AN ACT concerning agriculture; relating to agricultural activities; protection of farmland and agricultural activities from certain nuisance actions; amending K.S.A. 2-3202 and 2-3203 and repealing the existing sections.**

Date: March 11, 2013

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

Thank you, Chairwoman Schwartz and members of the Committee, my name is Myndee Reed and I am Associate Counsel with the Kansas Livestock Association (KLA). KLA appears today as a proponent of SB 168. Our members support this bill, and believe it will provide necessary protection of farmland and agricultural activities.

Kansas has a declared policy to conserve, protect and encourage the development and improvement of farmland for the production of food and other agricultural products. This policy is articulated at K.S.A. 2-3201. Previously, the legislature has determined that agricultural activities conducted on farmland in areas in which nonagricultural uses have encroached into agricultural areas are often subjected to nuisance lawsuits, and that these suits encourage and even force the premature abandonment of the lands for agricultural uses. The legislature has declared that, "the purpose of this act¹ [is] to provide agricultural activities conducted on farmland protection from nuisance lawsuits." K.S.A. 2-3201. KLA concurs with the Department of Agriculture that the Kansas right-to-farm laws should be strengthened.

SB 168 reinforces the current right-to-farm laws by prudently limiting the damages agricultural operations may face in nuisance claims. In permanent nuisance circumstances, the bill does this by limiting compensatory damages to the reduction in the fair market value of the claimant's property. If the nuisance is only temporary, compensatory damages are limited to the lesser of the diminution in fair rental value of the claimant's property caused by such nuisance, the value of the loss of the use and enjoyment of the claimant's property caused by such nuisance or the reasonable cost to repair or mitigate any injury to the claimant caused by such nuisance.

¹ Article 32. Protection of Farmland and Agricultural Activities

The current right-to-farm laws are also buttressed by SB 168 in that the bill clarifies those circumstances in which a nuisance is deemed incapable of abatement. This is important because once a nuisance is deemed to be permanent the liability of the landowner is finite. For example, finding that a nuisance is permanent limits the amount of time in which a nuisance action can be filed against a landowner. When an injury to agricultural land is classified as temporary or recurring in nature or it is determined that defects can be repaired or remedied at reasonable expense, successive injuries give rise to separate and distinct causes of action. The effect is to enlarge the time to file a nuisance action.

Where permanent damages to the land are sought, and the evidence supports that claim, the action must be brought within two years after a substantial injury was reasonably ascertainable. Under SB 168, a nuisance is considered permanent if a landowner has substantially complied with a court order to abate a nuisance, but despite the efforts, the nuisance was not able to be abated.

SB 168 also provides protection for farmland and agricultural activities by clarifying that agricultural operations can expand, decrease, or temporarily cease operating and continue to receive protection under the statute. This bill also makes clear that the protected status is assignable and inheritable.

Thank you for the opportunity to submit testimony. KLA urges the committee to pass the bill as introduced.