

As Amended by House Committee

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 168

By Committee on Agriculture

2-11

1 AN ACT concerning agriculture; relating to agricultural activities;
2 protection of farmland and agricultural activities from certain nuisance
3 actions; amending K.S.A. 2-3202 and 2-3203 and repealing the existing
4 sections.
5

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

7 New Section 1. (a) The exclusive compensatory damages that may be
8 awarded to a claimant where the alleged nuisance originates from
9 farmland primarily used for agricultural activity shall be as follows:

10 (1) If the nuisance is determined to be a permanent nuisance,
11 compensatory damages shall be limited to the reduction in the fair market
12 value of the claimant's property caused by such nuisance, not to exceed the
13 fair market value of such claimant's property; and

14 (2) if the nuisance is determined to be a temporary nuisance,
15 compensatory damages shall be limited to the lesser of:

16 (A) The diminution in fair rental value of the claimant's property
17 caused by such nuisance;

18 (B) the value of the loss of the use and enjoyment of the claimant's
19 property; or

20 (C) the reasonable cost to repair or mitigate any injury to the claimant
21 caused by such nuisance.

22 (b) If any claimant or claimant's successor in interest brings a
23 subsequent nuisance claim against the same defendant or defendant's
24 successors in interest for an alleged nuisance related to the same or a
25 substantially similar agricultural activity, such claimant and claimant's
26 successors in interest shall be limited to the compensatory damages for a
27 permanent nuisance as provided in subsection (a)(1). Damages from any
28 previous final court order or judgment against the defendant or defendant's
29 successors in interest shall be considered in any subsequent case for the
30 purposes of determining that the total amount of damages awarded shall
31 not exceed the fair market value of such claimant's property.

32 (c) If a defendant in a private nuisance case where the nuisance is
33 alleged to originate from farmland used for agricultural activity
34 demonstrates a good faith effort to abate a condition that is determined to

1 constitute a nuisance, and such good faith effort is unsuccessful, such
2 nuisance shall be deemed to be not capable of abatement and
3 compensatory damages shall be limited as provided in subsection (a)(1).
4 Substantial compliance with a court order regarding such farmland shall
5 constitute a good faith effort as a matter of law.

6 (e) No person shall have standing to bring an action for private
7 nuisance pursuant to this section unless such person has an ownership
8 interest in the property alleged to be affected by the nuisance.

9 (f) If any provision of this section or the application thereof to any
10 person or circumstances is held invalid, such invalidity shall not affect
11 other provisions or applications of this section which can be given effect
12 without the invalid provision or application, and to this end the provisions
13 of this section are declared to be severable.

14 (g) This section shall be part of and supplemental to article 32 of
15 chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

16 Sec. 2. K.S.A. 2-3202 is hereby amended to read as follows: 2-3202.

17 (a) Agricultural activities conducted on farmland, if consistent with good
18 agricultural practices and established prior to surrounding *agricultural or*
19 nonagricultural activities, are presumed to be reasonable and do not
20 constitute a nuisance, public or private, unless the activity has a substantial
21 adverse effect on the public health and safety.

22 (b) If such agricultural activity is undertaken in conformity with
23 federal, state, and local laws and *rules and* regulations, it is presumed to be
24 good agricultural practice and not adversely affecting the public health and
25 safety.

26 (c) *An owner of farmland who conducts agricultural activity*
27 *protected pursuant to the provisions of this section:*

28 (1) *May reasonably expand the scope of such agricultural activity,*
29 *including, but not limited to, increasing the acreage or number of animal*
30 *units or changing agricultural activities, without losing such protection so*
31 *long as such agricultural activity complies with all applicable—~~county~~*
32 **local**, *state, and federal environmental codes, resolutions, laws and rules*
33 *and regulations;*

34 (2) *may assign or transfer such protection to any successor in*
35 *interest; and*

36 (3) *shall not be deemed to waive such protection by temporarily*
37 *ceasing or decreasing the scope of such agricultural activity.*

38 Sec. 3. K.S.A. 2-3203 is hereby amended to read as follows: 2-3203.
39 As used in this act:

40 (a) "Agricultural activity" means the growing or raising of
41 horticultural and agricultural crops, hay, poultry and livestock, and
42 livestock, poultry and dairy products for commercial purposes *and*
43 *includes activities related to the:*

1 **(1) *Wholesale handling, storage and transportation of agricultural***
2 ***commodities; or***

3 **(2) *retail sale of agricultural products, the majority of which are***
4 ***raised, grown or processed on the farmland.***

5 (b) "Farmland" means land devoted primarily to an agricultural
6 activity.

7 (c) "Person" means any individual, partnership, profit or nonprofit
8 corporation, trust, organization or any other business entity, but does not
9 include any governmental entity.

10 (d) "Agricultural chemical" means those agricultural chemicals as
11 defined in the agricultural chemical act set forth in K.S.A. 2-2201 et seq.,
12 and amendments thereto.

13 Sec. 4. K.S.A. 2-3202 and 2-3203 are hereby repealed.

14 Sec. 5. This act shall take effect and be in force from and after its
15 publication in the statute book.