

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 168

As Amended by Senate Committee on
Agriculture

Brief*

SB 168 would amend existing law relating to the protection of farmland and agricultural activities from certain nuisance actions.

Compensatory Damages

The bill would create a new section setting out compensatory damages that may be awarded to a claimant from a nuisance action against farmland primarily used for agricultural activity. The bill would divide the level of damages between a permanent and temporary nuisance. If the nuisance would be determined to be permanent, compensatory damages would be limited to the reduction in the fair market value of the claimant's property caused by such nuisance, but could not exceed the fair market value of the claimant's property. If the nuisance would be deemed temporary, compensatory damages would be limited to the lesser of:

- The diminution in fair rental value of the claimant's property;
- The value of the loss of the use and enjoyment of the claimant's property; or
- The reasonable cost to repair or mitigate any injury to the claimant caused by the nuisance.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would limit compensatory damages awarded to a claimant or a claimant's successor for a nuisance action brought against the same defendant or defendant's successors for an alleged nuisance related to the same or similar agricultural activity to the reduction in the fair market value of the claimant's property. Any damages from a previous court order against the defendant or defendant's successors would be considered in any subsequent case to determine that the total amount of damages awarded would not exceed the fair market value of the claimant's property.

If a defendant would make a good faith effort to abate the alleged nuisance, and the effort is unsuccessful, the nuisance would be deemed not capable of abatement and any compensatory damages would be limited to the reduction in the fair market value of the claimant's property.

The bill would prevent a person from bringing an action for private nuisance unless the person has an ownership interest in the property alleged to be affected by the nuisance.

Agricultural Activities

The bill would allow any agricultural activity conducted on farmland, if consistent with good agricultural practices and established prior to surrounding agricultural or non-agricultural activities, to be presumed reasonable and would not constitute a nuisance. The bill would presume an agricultural activity that is undertaken in conformity with federal, state, and local laws and rules and regulations to be considered good agricultural practice.

The bill would provide certain rights to an owner of farmland who conducts agricultural activity protected under the Act, enumerated as follows:

- The owner could reasonably expand the scope of the agricultural activity, including, but not limited to, increasing the acreage or number of animal units

or changing agricultural activities, without losing protections so long as the agricultural activity complies with all applicable local, state, and federal environmental codes, resolutions, laws, and rules and regulations;

- The owner could assign or transfer the protections to any successor in interest; and
- The owner would not be deemed to waive the protections by temporarily ceasing or decreasing the scope of the agricultural activity.

The bill would define agricultural activity to include activities related to the wholesale handling, storage, and transportation of agricultural commodities.

Background

The bill was introduced by the Senate Committee on Agriculture at the request of the Kansas Department of Agriculture (KDA).

At the Senate Committee hearing, proponents included representatives from the KDA, the Kansas Livestock Association (KLA), the Kansas Grain and Feed Association (KGFA), the Kansas Agribusiness Retailers Association (KARA), the Kansas Cooperative Council (KCC), the Kansas Association of Ethanol Processors (KAEP), the Kansas Farm Bureau, and the Kansas Pork Association (KPA).

The representative from the KDA testified the bill would add an important layer of protection for farmers and ranchers from nuisance claims. The representative testified that some states have strengthened their agricultural nuisance laws in response to legal challenges from individuals and groups who oppose modern agriculture. The representative also testified the bill would strengthen Kansas right-to-farm laws and take important steps to protect Kansas farmland and agricultural

operations. The KLA representative testified that the bill provides necessary protection of farmland and agricultural activities. The representative also testified the bill reinforces current right-to-farm laws by limiting the damages agricultural operations may face in nuisance claims and makes clear farmland and agricultural activities may be expanded, decreased, or temporarily ceased while still receiving protection under the law. The KGFA, KARA, KAEP, and KCC representative testified the bill would further Kansas policy to protect and encourage the use of Kansas resources in agricultural activities. The Kansas Farm Bureau representative testified that its members stand in support of any legislation which prevents any increased liability for owners of land or livestock. The representative also testified the bill would expand protections afforded to farmers and ranchers under right-to-farm laws. The KPA representative testified the bill would help strengthen the protections for agricultural producers and helps to protect producers from the potential of costly damages of nuisance claims.

There was no opponent or neutral testimony at the Senate Committee hearing.

The Senate Committee amended the bill to include activities related to the wholesale handling, storage, and transportation of agricultural commodities in the definition of agricultural activity. The Senate Committee further amended the bill to make language internally consistent.

The Division of the Budget fiscal note on the original bill indicated the passage of the bill would have no fiscal effect on the KDA.