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To: House Committee on Federal and State Affairs
Rep. John Barker, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **HB 2025 – AN ACT concerning privacy rights; relating to real property; imposing restrictions on access and surveillance by certain governmental officials and agencies.**

Date: February 4, 2021

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Barker and members of the Committee for the opportunity to present KLA's views on HB 2025. KLA is testifying as neutral today as we are unclear what this bill seeks to accomplish, and we would like to discuss some potential concerns we may have with the bill as it moves through the legislative process.

KLA would like to focus most of our remarks on the portions of the bill that pertain to the noxious weed laws. However, some of our comments may be relevant to other portions of the bill as the Committee considers whether to make any changes.

First and foremost, KLA has numerous policies that support Kansas' noxious weed laws. These policies not only call on county weed supervisors to assist in control and eradication of weeds, but also calls on government entities to share in the burden of noxious weed control, especially in cases where noxious weeds were originally introduced onto the landscape by government agencies. At the same time, KLA members also value private property rights. It is at this intersection that noxious weed laws operate.

If noxious weeds could be contained to a private tract of land, it is likely the weeds would not be noxious. These weeds, however, easily traverse property lines and cause significant property damage, especially in native range settings. As a result, Kansas has adopted what are mostly civil remedies to control and eradicate noxious weeds. Private landowners have a duty to control and eradicate noxious weeds. If that duty is not upheld, a county weed supervisor can, after giving adequate notice, control the noxious weeds on private property and charge the cost of control back to the landowner. This portion of the statute does not entail criminal liability. It is only the sale of screenings, feed, fertilizer, and plants infested with noxious weeds or the transport of noxious weeds in harvesting equipment that are class C misdemeanors.

In regard to HB 2025, it is unclear as to what portion of the noxious weeds laws a warrant would apply. It would be rare for a civil penalty statute to require a warrant, especially where it implicates a business and not a home. If the bill intends to apply the warrant provisions only to the aforementioned criminal acts, it should probably clarify that with additional language. If the intent is to require a warrant for the civil penalty portions of the law, KLA would have concerns that such a requirement would further deter county weed supervisors from controlling the spread of noxious weeds. It is a common complaint among landowners that county weeds supervisors are not currently responsive to complaints when given specific information on infested properties.

Another question pertaining to the bill is whether it actually accomplishes its intended purpose. It appears the bill is targeted at limiting the open fields doctrine, a U.S. Supreme Court doctrine that limits application of the Fourth Amendment to the U.S. Constitution. The doctrine limits the prohibition of illegal searches and seizures to a person's home and the area immediately surrounding the home. Conversely, the doctrine has been used to support warrantless surveillance conducted in open fields as lawful under the Fourth Amendment. There may be legitimate reasons for the legislature to curtail such searches through statute. However, it is unclear whether the language in this bill accomplishes that goal.

For instance, the HB 2025 generally prohibits surveillance on private property by county weed supervisors, but then lists exceptions to the general prohibition that include surveillance authorized by "the constitution of the United States or a judicially recognized exception to the search warrant requirement." Supreme Court cases have upheld open field surveillance without a warrant and upheld warrantless inspections that led to civil penalties. As drafted, HB 2025 appears to allow county weed supervisors to continue doing what the county weed supervisors are currently doing - entering private property without a warrant to inspect and enforce the laws' civil penalty provisions.

Thank you for the opportunity to submit KLA's views to the Committee. As we have stated, KLA is neutral on the bill at this point as we are unclear what its purpose is in regard to county weed supervisors. As of now, it does not appear to restrict the county weed supervisors' activities under the Kansas noxious weed laws. Should the provisions of this bill change, however, and make it more difficult to control the spread of noxious weeds, KLA might reevaluate its stance on HB 2025.