

Before the Senate Agriculture and Natural Resources Committee
Written-only Testimony by Zack Pistora, Kansas Sierra Club
Opponent to SB 389
2-14-24



Dear Chairman Peck and Members of the Committee,

Thank you for the opportunity to submit testimony in opposition of SB 389, which institutes restrictions on access to animal facilities and crop production areas.

The Kansas Sierra Club respectfully opposes SB 389 because the bill goes too far in penalizing whistleblowers.

In previous situations, the Kansas Sierra Club has utilized legal aerial photography and satellite imaging to monitor and inspect animal facilities to ensure that laws and permits (often with respect to lagoons and facility construction) were not violated. In some cases, we have found violations and petitioned KDHE or courts for justice. In reading SB 389, it seems like these practices would be allowed to be going forward, but perhaps in other cases or with other practices employed by other environmental or animal advocacy groups, SB 389 could very well impede those acting as whistleblowers to secret or hidden crimes. Indeed, whistleblowers have served a key role in exposing legal violations and unethical practices in our society, reducing evils that may have otherwise been unknown or unseen. By expanding the scope and penalties of crimes, SB 389 undermines the value of whistleblowers in exposing crimes.

SB 389 is also deficient because the bill creates steep penalties for unfortunate accidents.

SB 389 would create a new "strict liability" crime, punishable as a level 7 nonperson felony if "property" with a value of more than \$25,000 is damaged or destroyed. Lesser felony and misdemeanor penalties apply if the dollar loss is less. While most crimes require 'criminal intent' that encompasses an actor acting purposefully, knowingly, recklessly, negligently, etc., a "strict liability" crime can result in criminal charges against citizens without any intent to commit a criminal act or cause damage/destruction.

Here are some examples in which SB 389 could result in unfortunate and unintentional outcomes:

- A traffic accident involving a semi-trailer load of cattle or hogs is a felony or perhaps a misdemeanor for the driver of the vehicle which caused the accident, and possibly the driver of the livestock trailer as well: A "vehicle" is an "animal facility", and the damage done to the trailer (and likely to the livestock therein) is a crime.
- Similarly, a farmer taking hogs to market in his/her pickup drives off the roadway and rolls the pickup. The accident is a crime under SB 389 because of the damage to the pickup ("a vehicle") and to the hogs, regardless of any traffic law violation (e.g. a tire blowout, an icy road, or avoiding an oncoming vehicle (not a traffic violation) by the pickup driver). In any case, there is no intent by the farmer to "damage or destroy" but that does not matter. As intent is removed from the law, the harm caused by the rollover is in and of itself the crime, possibly a level 7 nonperson felony.

- Aircraft flights to and from general aviation airports located near 'animal facilities' can make pilots subject to class A misdemeanors regardless of intent. Again, the act of flying over the animal facility without consent of the owner is a crime. There are likely many locations where the landing approach and/or take-off zone takes a plane over an animal facility, which could be a fishpond, a dog kennel (or puppy mill) or a cattle pen or hog lot. Airport managers would need to get consent from owners of identifiable animal facilities to protect the pilots using their airports from experiencing the risk of criminal prosecution.

We think this bill needs some reworking; we would urge you to oppose SB 389.

Thank you for your attention.

Sincerely,

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The Sierra Club is the largest grassroots organization dedicated to enjoying, exploring, and protecting our great outdoors. The Kansas Chapter has been our state's strongest grassroots voice on environmental matters for fifty years.