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To: The House Agriculture and Natural Resources Committee  
Representative Sharon Schwartz, Chair

From: Mike Beam, Kansas Livestock Association

Re: Testimony in support of House Bill No. 2404, a bill repealing restrictions on corporations owning agricultural land and operating agricultural production facilities.

Date: March 20, 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 seedstock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.*

Madam Chair and committee members, the Kansas Livestock Association supports HB 2404. This bill would:

- a) repeal restrictions on certain corporations, limited liability companies, limited partnerships and corporate partnerships owning agricultural land in Kansas;
- b) repeal statutes requiring county-by-county approval for an unauthorized corporation or limited liability company to hold or lease agricultural land for use as a swine production facility or dairy production facility; and
- c) expressly authorize any agricultural business entity to conduct agricultural business and establish agricultural operations anywhere in Kansas.

It's important to note the current farm corporation law, and HB 2404, has no prohibition on size of operations permitted in Kansas. The law, and HB 2404, addresses the corporate structure of entities allowed to operate in this state.

#### **KLA-supported 1981 rewrite of corporate farm law**

The last major reform or overhaul of the Kansas corporate farm law was in 1981 (SB 298). The impetus for the Legislature to rewrite this law was a determination by the Kansas Attorney General that several agricultural landowners were not in compliance with the law. In addition, the pre-1981 corporate farming laws were a product of the 1965 Legislature and had become too restrictive for agricultural landowners who had grown their operations and/or chose to use a corporate business structure for their farming and ranching business. These restrictions included a 5,000 acre limitation for permitted corporations, a limit of 10 stockholders, and a determination that nonagricultural corporations (DuPont) illegally owned land as a buffer or for future expansions.

For these reasons, KLA and others in the agriculture/business community were proponents of updating the corporate farming statute in 1981. The result was the passage of legislation with 13 exemptions to the corporate ownership restrictions. (see attached KSA 17-5904)

## **What's changed since 1981?**

As we fast-forward 32 years since the last corporate farming overhaul, we contend there have been even more changes in agriculture and the state's corporate ownership restrictions are outdated and unnecessary.

During the early 1980s producers were faced with declining commodity prices, depressed land values and 20% interest rates. A considerable amount of land changed hands during this time period as many producers no longer were able to service debt and were forced to sell part or all of their land holdings. If there was ever a time to be concerned about large corporate entities buying up land from local, family-based operations it was the five to 10 years following the 1981 rewrite of the corporate farm laws.

Fortunately, farmers and ranchers are in a much sounder financial situation today. The farm debt-to-asset ratio has been steadily declining since 1985's peak value of 23% - except for a one-year reversal in 2008 - to a projected historic low of 10.5% in 2012.<sup>i</sup> If you ask realtors and agricultural lenders, they report that buyers at farm and ranch land auctions today are often existing agricultural producers who don't always need financing for their purchases.

Another change since 1981 to consider is the evolution of new generations of agricultural producers during this 32-year time lapse. As more family members assume or inherit ownership of a farm or ranch operation, it becomes more difficult to comply with the definition of eligible agricultural entities that can own land, such as Family Farm Corporations, Authorized Farm Corporations, Limited Liability Agricultural Companies, and Family Farm Limited Liability Agricultural Companies. Repealing the corporate farm statutes will provide multi-generational farm and ranch families an easier environment for succession planning.

Court decisions since 1981, in states with similar corporate farming prohibitions, cast doubt on the constitutionality of Kansas law regarding agricultural land ownership. This doubt recently has surfaced with the January 2, 2013, Kansas Attorney General opinion. We contend it's necessary for the Kansas Legislature to act, and the most appropriate action is to repeal the corporate farming restriction statutes as they no longer are necessary or appropriate.

On a final note, we'd like to express support for the repeal of the sections KSA 17-5907 and KSA 17-5908 that require county approval for corporations (other than those included in KSA 17-5904) to operate dairy production facilities and swine production facilities. These types of businesses, regardless of their corporate structure, are regulated by the Kansas Department of Health and Environment for environmental impacts. These regulations include separation distances between new facilities and habitable structures. Let's omit the county-by-county approval process and make our state laws more inviting to entities wanting to locate their business in this state.

In conclusion, KLA contends the current corporate farming law is outdated; limits the business option for Kansas farms, ranches and livestock operations; is likely unconstitutional. We suggest the time for repeal of these statutes is now and we urge this committee to give favorable consideration to HB 2404.

Thank you

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<sup>i</sup> U.S. Farm Income, Congressional Research Service, December 10, 2012

**Statute 17-5904: Restrictions; exceptions; penalties.** (a) No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state. The restrictions provided in this section do not apply to the following:

(1) A bona fide encumbrance taken for purposes of security.

(2) Agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious or charitable nonprofit corporation.

(3) Agricultural land acquired by a corporation or a limited liability company in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.

(4) Agricultural land acquired by a corporation or a limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure, except that provisions of K.S.A. 9-1102, and amendments thereto, shall apply to any bank which acquires agricultural land.

(5) A municipal corporation.

(6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.

(7) Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741, and amendments thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 prior to its repeal shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.

(8) Agricultural land held or leased by a corporation or a limited liability company for use as a feedlot, a poultry confinement facility or rabbit confinement facility.

(9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.

(10) Agricultural land used for bona fide educational research or scientific or experimental farming.

(11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.

(12) Agricultural land owned or leased by a corporate partnership or limited corporate partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts.

(13) Any corporation, either domestic or foreign, or any limited liability company, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.

(14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.

(15) Except as provided by K.S.A. 17-5908, as it existed before the effective date of this act, and K.S.A. 1998 Supp. 17-5909, agricultural land held or leased by a corporation or a limited liability company for use as a swine production facility in any county which, before the effective date of this act, has voted favorably pursuant to K.S.A. 17-5908, as it existed before the effective date of this act, either by county resolution or by the electorate.

(16) Agricultural land held or leased by a corporation or limited liability company for use as a swine production facility in any county where the voters, after the effective date of this act, have voted pursuant to K.S.A. 17-5908, and amendments thereto, to allow establishment of swine production facilities within the county.

(17) Agricultural land held or leased by a corporation or a limited liability company for use as a dairy production facility in any county which has voted favorably pursuant to K.S.A. 17-5907 and amendments thereto, either by county resolution or by the electorate.

(18) Agricultural land held or leased by a corporation or a limited liability company used in a hydroponics setting.

(b) Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

(c) Any corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divest itself of any land acquired in violation of this section within one year after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.

(d) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

**History:** L. 1981, ch. 106, § 2; L. 1986, ch. 96, § 3; L. 1987, ch. 368, § 2; L. 1988, ch. 99, § 56; L. 1991, ch. 76, § 10; L. 1994, ch. 130, § 4; L. 1994, ch. 331, § 2; L. 1996, ch. 225, § 2; L. 1998, ch. 143, § 44; May 7.