

SESSION OF 2024

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2047**

As Recommended by Senate Committee on
Agriculture and Natural Resources

Brief*

Senate Sub. for HB 2047 would make clarifying amendments to the Farm Animal and Field Crop and Research Facilities Protection Act (Act).

***Prohibition of Entering or Remaining in Facilities and
Areas; Flying an Aircraft***

The bill would prohibit a person from entering or remaining upon or in any animal facility or field crop production area of a product development program in conjunction or coordination with a private research facility, a university, or any federal, state, or local government entity without the consent of the owner.

The prohibition would include flying an aircraft within the airspace directly above the animal facility or production area, but below the minimum safe altitude, defined in 14 CFR § 91.119(c) and as in effect on July 1, 2024.

Prohibition of False Statements

The bill would prohibit a person from knowingly making false statements on an employment application in order to gain access to an animal facility or field crop production area of a product development program in conjunction or

*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>

coordinating with a private research facility, a university, or any federal, state, or governmental agency.

Criminal Penalties

The bill would clarify that violations of the Act would be a:

- Class A nonperson misdemeanor;
- Severity level 9 nonperson felony, if property damaged or destroyed is of a value of more than \$1,000, but less than \$25,000; or
- Severity level 7 nonperson felony, if the property damaged or destroyed is of a value more than \$25,000.

Definitions

The bill would remove the definitions of “deprive,” “effective consent,” and “possession.”

Background

The Senate Committee removed the contents of HB 2047, added the contents of SB 389, and recommended a substitute bill. The background for SB 389 is detailed below.

[*Note:* The original contents of HB 2047 regarding rules and regulations by the Secretary of Health and Environment and amortization of loans from the Kansas Water Pollution Control Revolving Fund were passed in 2023 SB 120.]

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing on February 14, 2024, **proponent** testimony was provided by a representative of the Kansas Livestock Association, who provided a history of the Act in that the original Act was found unconstitutional in part by the U.S. Court of Appeals for the Tenth Circuit in 2022. The proponent stated the Court struck down portions of the Act on First Amendment grounds, because the term “effective consent” regulated speech and “intent to damage” was impermissible viewpoint discrimination. The U.S. Supreme Court declined to the State of Kansas’ appeal. Therefore, this bill is a way to fix the unconstitutional portions of the law and also address concerns by stakeholders regarding low flying drones and other aircraft that disturb cattle and create safety and security concerns for employees.

Written-only proponent testimony was provided by representatives of the Kansas Farm Bureau; Kansas Grain and Feed Association, Kansas Agribusiness Retailers Association, and Renew Kansas Biofuels Association; and Kansas Pork Association.

Opponent testimony was provided by a representative of the Kansas Chapter of Sierra Club, who stated the bill goes too far in penalizing whistleblowers and could undermine whistleblowers’ efforts. The opponent also stated the bill would create a new strict liability crime with steep penalties that could be charged against someone without any intent to commit a criminal act or cause damage or destruction.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 389, as introduced, the Office of Judicial Administration (OJA) estimates that the enactment of the bill could increase the number of cases filed in district courts

which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. The OJA indicates the crime carries misdemeanor and lower-level penalties, which could lead to more supervision of offenders required to be performed by court services officers but notes that the full impact is unknown. The passage of the bill could result in the increase of supervision fees, docket fees, and fines in cases filed under the provisions of the bill, most of which would be deposited in the State General Fund. The OJA notes that until the courts have had the opportunity to operate under the provisions of the bill, an accurate estimate of the fiscal effect for the Judicial Branch cannot be given.

The Kansas Sentencing Commission and the Kansas Department of Agriculture indicate the enactment of the bill would not have a fiscal effect on their respective operations. The Commission notes that the bill could increase prison admissions and prison beds, but any increase would be minor.

Animal facility; field crop production area; aircraft; criminal penalties; Farm Animal and Field Crop and Research Facilities Protection Act