

Substitute for SENATE BILL No. 36

AN ACT concerning agriculture; relating to the farm animal and field crop and research facilities protection act; criminal and civil penalties and recovery of damages; amending K.S.A. 47-1825, 47-1826, 47-1827 and 47-1828 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 47-1825 is hereby amended to read as follows: 47-1825. This act shall be known and may be cited as the farm animal *and field crop* and research facilities protection act.

Sec. 2. K.S.A. 47-1826 is hereby amended to read as follows: 47-1826. As used in this act:

(a) "Animal" means any warm or coldblooded animal used in food, fur or fiber production, agriculture, research, testing or education and includes dogs, cats, poultry, fish and invertebrates.

(b) "Animal facility" includes any vehicle, building, structure, research facility or premises where an animal is kept, handled, housed, exhibited, bred or offered for sale.

(c) "Consent" means assent in fact, whether express or apparent.

(d) "Deprive" means to:

(1) Withhold an animal or other property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;

(2) restore the animal or other property only upon payment of reward or other compensation; or

(3) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.

(e) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(1) Induced by force or threat;

(2) given by a person the offender knows is not legally authorized to act for the owner; or

(3) given by a person who by reason of youth, mental disease or defect or under the influence of drugs or alcohol is known by the offender to be unable to make reasonable decisions.

(f) "Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(g) "Person" means any individual, state agency, corporation, association, nonprofit corporation, joint stock company, firm, trust, partnership, two or more persons having a joint or common interest or other legal entity.

(h) "Possession" means actual care, custody, control or management.

(i) "Research facility" means any place, laboratory, institution, medical care facility, elementary school, secondary school, college or university, at which any scientific test, experiment or investigation involving the use of any living animal *or field crop product* is carried out, conducted or attempted.

Sec. 3. K.S.A. 47-1827 is hereby amended to read as follows: 47-1827. (a) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility, damage or destroy an animal facility or any animal or property in or on an animal facility.

(b) No person shall, without the effective consent of the owner, acquire or otherwise exercise control over an animal facility, an animal from an animal facility or other property from an animal facility, with the intent to deprive the owner of such facility, animal or property and to damage the enterprise conducted at the animal facility.

(c) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility:

(1) Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section;

(2) remain concealed, with intent to commit an act prohibited by this section, in an animal facility;

(3) enter an animal facility and commit or attempt to commit an act prohibited by this section; or

(4) enter an animal facility to take pictures by photograph, video camera or by any other means.

(d) (1) No person shall, without the effective consent of the owner

and with the intent to damage the enterprise conducted at the animal facility, enter or remain on an animal facility if the person:

- (A) Had notice that the entry was forbidden; or
 - (B) received notice to depart but failed to do so.
- (2) For purposes of this subsection (d), “notice” means:
- (A) Oral or written communication by the owner or someone with apparent authority to act for the owner;
 - (B) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or
 - (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

(e) No person shall, without the effective consent of the owner and with the intent to damage or destroy the field crop product, damage or destroy any field crop product that is grown in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency.

(f) No person shall, without the effective consent of the owner and with the intent to damage or destroy the field crop product, enter any property, with the intent to damage or destroy any field crop product that is grown in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency.

~~(e)~~ (g) (1) Violation of subsection (a) or (e) is a ~~class-D~~ severity level 7, *nonperson* felony if the facility, animals, *field crop product* or property is damaged or destroyed to the extent of ~~\$50,000~~ \$25,000 or more. Violation of subsection (a) or (e) is a ~~class-E~~ severity level 9, *nonperson* felony if the facility, animals, *field crop product* or property is damaged or destroyed to the extent of at least \$500 but less than ~~\$50,000~~ \$25,000. Violation of subsection (a) or (e) is a class A *nonperson* misdemeanor if the facility, animals, *field crop product* or property damaged or destroyed is of the value of less than \$500 or is of the value of \$500 or more and is damaged to the extent of less than \$500.

(2) Violation of subsection (b) or ~~(e)~~ is a ~~class-E~~ severity level 10, *nonperson* felony.

(3) *Violation of subsection (c) is a class A, nonperson misdemeanor.*

(4) Violation of subsection (d) or (f) is a class B *nonperson* misdemeanor.

~~(h)~~ (h) The provisions of this section shall not apply to lawful activities of any governmental agency or employees or agents thereof carrying out their duties under law.

Sec. 4. K.S.A. 47-1828 is hereby amended to read as follows: 47-1828. (a) Any person who has been damaged by reason of a violation of K.S.A. 47-1827, *and amendments thereto* may bring an action in the district court against the person causing the damage to recover:

(1) An amount equal to three times all actual and consequential damages. *Actual and consequential damages shall include the damages involving production, research, testing, replacement and crop or animal development costs directly related to the field crop or animal that has been damaged or destroyed;* and

(2) court costs and reasonable attorney fees.

(b) Nothing in this act shall be construed to affect any other rights of a person who has been damaged by reason of a violation of this act. Subsection (a) shall not be construed to limit the exercise of any such rights arising out of or relating to a violation of K.S.A. 47-1827, *and amendments thereto*.

Sec. 5. K.S.A. 47-1825, 47-1826, 47-1827 and 47-1828 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.