

SENATE BILL No. 168

By Committee on Agriculture

2-11

Proposed amendment to SB 168 by Senator Francisco
2/25/13
Senate Committee on Agriculture
Prepared by David Wiese
Office of Revisor of Statutes

Senate Agriculture Committee
Date: 2-26-13
Attachment # 2-1
Sen Francisco, David Wiese ORS
balloon amendment SB 168

1 AN ACT concerning agriculture; relating to agricultural activities;
2 protection of farmland and agricultural activities from certain nuisance
3 actions; amending K.S.A. 2-3202 and 2-3203 and repealing the existing
4 sections.
5

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

7 New Section 1. (a) The exclusive compensatory damages that may be
8 awarded to a claimant where the alleged nuisance originates from
9 farmland primarily used for agricultural activity shall be as follows:

10 (1) If the nuisance is determined to be a permanent nuisance,
11 compensatory damages shall be limited to the reduction in the fair market
12 value of the claimant's property caused by such nuisance, not to exceed the
13 fair market value of such claimant's property; and

14 (2) if the nuisance is determined to be a temporary nuisance,
15 compensatory damages shall be limited to the lesser of:

16 (A) The diminution in fair rental value of the claimant's property
17 caused by such nuisance;

18 (B) the value of the loss of the use and enjoyment of the claimant's
19 property; or

20 (C) the reasonable cost to repair or mitigate any injury to the claimant
21 caused by such nuisance.

22 (b) If any claimant or claimant's successor in interest brings a
23 subsequent nuisance claim against the same defendant or defendant's
24 successors in interest for an alleged nuisance related to the same or a
25 substantially similar agricultural activity, such claimant and claimant's
26 successors in interest shall be limited to the compensatory damages for a
27 permanent nuisance as provided in subsection (a)(1). Damages from any
28 previous final court order or judgment against the defendant or defendant's
29 successors in interest shall be considered in any subsequent case for the
30 purposes of determining that the total amount of damages awarded shall
31 not exceed the fair market value of such claimant's property.

32 (c) If a defendant in a private nuisance case where the nuisance is
33 alleged to originate from farmland used for agricultural activity
34 demonstrates a good faith effort to abate a condition that is determined to
35 constitute a nuisance, and such good faith effort is unsuccessful, such
36 nuisance shall be deemed to be not capable of abatement and