

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2047**

As Agreed to April 3, 2024

Brief*

Senate Sub. for HB 2047 would amend the Farm Animal and Field Crop and Research Facilities Protection Act; would amend the process for applying for and registering a livestock brand with the State; and would increase the fee limitation related to livestock brand application, registration, and renewal.

Farm Animal and Field Crop and Research Facilities Protection Act (Senate Sub. for HB 2047)

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, as 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 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 Farm Animal and Field Crop Research Facilities Protection Act would be a:

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

Definitions

The bill would add a definition for “aircraft” that would be the same as the definition in 14 CFR § 1.1. The bill would also remove the definitions of “deprive,” “effective consent,” and “possession.”

Livestock Branding (HB 2543)

[*Note:* Livestock brands must be registered with the Kansas Department of Agriculture (KDA) before use. They may be used on cattle, horses, mules, and asses (statutory term) and are designed using approved characters that are registered to be used on one of six locations on an animal: left or right hip, left or right rib, or left or right shoulder. The first laws requiring livestock brands to be registered with the State were passed in 1939.]

The bill would require a separate application and registration fee for each brand to be registered or approved.

Upon application for a brand, the bill would require the Animal Health Commissioner (Commissioner) and the KDA to determine whether the brand is available for use and registration and require the registrant, within 60 days of the notice of approval being sent by the Commissioner, to remit the brand registration fee. Upon approval, the bill would provide that a certificate of brand title would be provided upon payment of the brand registration fee. The bill would prohibit the use of a brand if a certificate of brand title has not been issued, and any such use would be subject to penalties as provided in KSA 47-421 and amendments thereto.

In current law, the cap on the brand registration fee is \$55. The bill states that in no case would the brand renewal fee or the total of the brand application fee and registration fee exceed \$100. If the fee is not paid as required by the bill, the Commissioner could deny the application.

Once approved, a brand registration is recorded for a five-year period, at which time a renewal is required. The bill would require each person wanting to renew a brand certificate title held by such person, upon the expiration of the recording period, to remit a renewal fee to the Commissioner.

The bill would clarify that the use of a forfeited brand is unlawful and would be subject to penalties as provided in KSA 47-421 and amendments thereto.

Technical and Clarifying Amendments (Throughout)

The bill would also make technical and clarifying amendments in continuing law.

Conference Committee Action

The Conference Committee agreed to the contents of Senate Sub. for HB 2047, with the following amendments:

- Adopted a definition of “aircraft” that references 14 CFR § 1.1;
- Added the contents of HB 2543, as amended by the Senate Committee;
- Changed an “and” to “or” regarding the fee limitation on brand renewal fees or livestock brand application and registration fees.

Background

The bill contains the provisions of Senate Sub. for HB 2047, as amended by the Senate Committee on Agriculture and Natural Resources, and HB 2543, as amended by the Conference Committee.

Senate Sub. for HB 2047 (Farm Animal and Field Crop and Research Facilities Protection Act)

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 (SB 389)

In the Senate Committee hearing, **proponent** testimony was provided by a representative of the Kansas Livestock Association, who provided a history of the Farm Animal and Field Crop and Research Facilities Protection 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 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.

HB 2543 (Livestock Brands)

The bill was introduced by the House Committee on Agriculture and Natural Resources at the request of a representative of the KDA.

House Committee on Agriculture and Natural Resources

In the House Committee hearing, **proponent** testimony was provided by representatives of the KDA and Kansas Livestock Association. The proponents stated the new registration fee could possibly deter people from submitting multiple brand applications without the intent of moving forward in the brand registration process, and that distinct brands aid in the search for lost or stolen livestock. Written-only proponent testimony was provided by a representative of the Kansas Farm Bureau. No other testimony was provided.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the KDA and Kansas Livestock Association. The proponents stated the bill would help cover research costs, ensure applicants are invested in registering a brand, keep the program at self-sustaining funding levels, aid law enforcement in investigating and solving livestock theft cases, and help animal health officials trace and control disease outbreaks. Written-only proponent testimony was provided by a representative of Kansas Farm Bureau. No other testimony was provided.

The Senate Committee amended the bill to:

- Require remittance of the brand registration fee within 60 days of the notice of approval being sent by the Commissioner;
- Modify the fee cap for the total of the the registration fee, application fee, and renewal fee to an amount not to exceed \$100;
- Clarify that only persons wanting to renew a brand certificate title held by such person would be required to remit a renewal fee to the Commissioner upon expiration of the recording period; and
- Clarify that unlawful use of a brand that has not been issued or has been forfeited would be subject to the penalties provided in KSA 47-421.

[*Note:* The Conference Committee retained these amendments.]

Fiscal Information

Senate Sub. for HB 2047 (Farm Animal and Field Crop and Research Facilities Protection Act)

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. Enactment 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 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.

HB 2543 (Livestock Brands)

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KDA indicates enactment of the bill would generate additional revenue of \$252,500 in both FY 2025 and FY 2026 for KDA's Livestock and Brand Inspection Fee Fund.

The KDA estimates it would receive approximately 1,500 new livestock brand applications in both FY 2025 and FY 2026 and would propose a \$5 application fee. The proposed fee would generate \$7,500 in new fee revenue in both FY 2025 and FY 2026. The KDA estimates it would receive a total of 3,500 livestock brand registrations or renewals in both FY 2025 and FY 2026 based on historical averages and would propose to increase the registration and renewal fee to \$70. The proposed fees would generate \$245,000 in additional fee revenue in both FY 2025 and FY 2026.

The KDA indicates previous fee revenue has not covered expenses of the program and estimates the proposed fee revenue would cover program costs in FY 2025 and FY 2026. The KDA estimates total program expenditures of \$245,000 in FY 2025 and \$252,670 in FY 2026 on contractual services for brand investigators, administrative and tag expenses, equipment, repairs, and education. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Agriculture; animal facility; field crop production area; aircraft; criminal penalties; livestock; branding; poultry disease control; conservation districts; industrial hemp; fees; funding; Kansas Department of Agriculture

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