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300 SW TENTH AVENUE ▪ SUITE 24-E ▪ TOPEKA, KS 66612 ▪ (785) 296-2321

MEMORANDUM

To: House Committee on Agriculture and Natural Resources

From: The Office of Revisor of Statutes

Date: 03/06/2024

Re: H.B. 2816; Prohibiting entering or remaining on and knowingly making false statements to gain access to animal facilities and field crop production areas, providing penalties therefor and removing the intent to destroy property in the farm animal and field crop and research facilities protection act.

H.B. 2816 would continue to prohibit entering or remaining on and knowingly making false statements to gain access to animal facilities and field crop production areas and would clarify the penalties for violations therefor. Additionally, the bill would remove the unconstitutional provisions regarding intent to destroy property in the farm animal and field crop and research facilities protection act.

Currently, the farm animal and field crop and research facilities protection act states that no person shall: (a) Without effective consent of the owner and with the intent to damage the enterprise, damage or destroy an animal facility or any animal or property in or on an animal facility; (b) acquire or exercise control over an animal facility without effective consent of the owner and with intent to damage; (c) record, attempt to record or trespass to record on an animal facility property without effective consent of the owner and with the intent to damage; and (d) trespass on an animal facility without effective consent of the owner and with the intent to damage the enterprise.

The 10th Circuit Court of Appeals in *Animal Legal Defense Fund v. Kelly* held that these provisions unconstitutionally violated the First Amendment of the Constitution of the United States. The court stated:

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Subsections (b), (c), and (d) of the Act concern speech because they include deception as a possible element and are viewpoint discriminatory because they apply only to persons who intend to damage the enterprise of an animal facility. Because the “intent to damage the enterprise conducted at the animal facility” requirement [...] is a broad element that does not delineate protected from unprotected speech, Kansas must satisfy strict scrutiny. It has not attempted to do so.¹

H.B. 2816 would amend the farm animal and field crop and research facilities protection act to remove the unconstitutional “intent” requirements so that the act’s prohibitions apply to all persons, regardless of intent. Additionally, persons would be prohibited from knowingly making false statements on an employment application to gain access to an animal facility. The bill would also clarify the penalties for any violations of the act.

H.B. 2816 would become effective upon publication in the statute book.

¹ *Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219 (10th Cir. 2021). (“Subsections (b), (c), and (d) of the operative section involve speech rather than merely conduct because they regulate what may be permissibly said to gain access to or control over an animal facility [...] The damage to the enterprise intended from ALDF’s investigations does not flow directly from deceiving the animal facility owner into allowing entry. Damage occurs only if the investigators uncover evidence of wrongdoing and share that information, resulting in other actors choosing to take further actions. This is too attenuated from the false speech to be the sort of harm Alvarez is concerned with. It is not like defamation, where the false speech directly causes reputational harm; fraud, where the false speech causes someone to hand over a thing a value; or perjury, lies to the government, or impersonating a government official, where the speech itself harms our institutions. Rather, there are numerous further causal links between the false speech and the animal facility suffering damage [...] Although the information from which the harm flows would not be obtainable without the false statement used to gain entry to the facility, the false statement itself does not directly cause the harm [...] Even if Kansas may ban recordings on private property or trespass-through-deception, it may not limit the scope of the prohibition due to favor or disfavor of the message [...] the incorporation of deception in the phrase “effective consent” results in speech being implicated, not conduct alone [...] Kansas confuses two related but distinct concepts: a landowner’s ability to exclude from her property someone who wishes to speak, and the government’s ability to jail the person for that speech.”)