

# *How Legislative Improvements Can Restore the Kansas Right-to-Farm Act to Its Intended Role in Protecting Kansans and Kansas Farmers*

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## **I. INTRODUCTION**

Like many Kansans, I come from a long line of farmers. I remember growing up and exploring the farm with my cousins, climbing hay bales, feeding cattle, and listening for the farm bell to let us know it was dinner time. This upbringing shaped me and Kansans like me over many generations. Sadly, fewer Kansans are experiencing this type of upbringing. A significant reason for this is the overexpansion of industrial agriculture corporations and the decline of Kansas family farms, like the one I grew up on. Kansas legislation has supported industrial agriculture through a seemingly protective measure that, in reality, is the root of the overexpansion.

Kansas legislation has facilitated this overexpansion through the Kansas Right-to-Farm Act,<sup>1</sup> which shields most agricultural activities from nuisance claims.<sup>2</sup> As a result, large agricultural corporations are allowed to take advantage of statutory protections that (as explored in detail below) the Kansas legislature enacted to protect Kansas farms from expanding urban development.<sup>3</sup> The Act allows these agricultural corporations to expand their operations and negatively affect communities without any legal repercussions, so long as the practice is undertaken “in conformity with federal, state, and local laws and rules and regulations.”<sup>4</sup> The language of the Act must be limited to lower protections for corporations while reasonably extending protection to small Kansas farmers.

Historically, family farms dotted Kansas’ landscape, many of which were passed down through generations.<sup>5</sup> Farming in Kansas has been around long before

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\*J.D., 2026, University of Kansas School of Law. I am deeply grateful to my grandparents, John Engelland and the late Judith Engelland, whose farm and the environment they created there shaped many of my most favorite childhood memories. Their example continues to motivate my desire to protect and preserve those traditions for future generations. Any errors or omissions are my own.

<sup>1</sup> *Kansas’s Right-to-Farm Summary*, ONE RURAL, <https://onerural.uky.edu/right-to-farm/KS> [https://perma.cc/RD7U-G76A].

<sup>2</sup> *States’ Right-to-Farm Statutes: Kansas*, THE NAT’L AGRIC. LAW CTR., <https://nationalaglawcenter.org/wp-content/uploads/assets/righttofarm/Kansas.pdf> [https://perma.cc/9QT6-F8QB].

<sup>3</sup> KAN. STAT. ANN. § 2-3201.

<sup>4</sup> KAN. STAT. ANN. § 2-3202.

<sup>5</sup> See generally Dave Kendall, *History of challenges adds to current stresses for Kansas farmers and their communities*, KAN. REFLECTOR (Apr. 3, 2022),

<https://kansasreflector.com/2022/04/03/history-of-challenges-adds-to-current-stresses-for-kansas-farmers-and-their-communities/> [https://perma.cc/2Q4C-84HQ].

white settlers entered the picture.<sup>6</sup> The first Kansas farmers were Native Americans who produced small amounts of corn and beans.<sup>7</sup> Later, white settlers moved to Kansas to strengthen the anti-slavery vote, becoming the newest Kansas farmers.<sup>8</sup> Most had no training or knowledge of farming, yet it was their sole livelihood.<sup>9</sup> To bring more people to Kansas, the Government offered homesteads to those who had “never borne arms against the U.S. government.”<sup>10</sup> Those who claimed the land had to live on the land and improve it through cultivation.<sup>11</sup> Many took advantage of this opportunity for a fresh start, becoming the Kansas pioneer farmers we know today.<sup>12</sup>

The first sign of industrialization was in the early 1900s, when farmers began to widely adopt motorized farming equipment.<sup>13</sup> Around the same time, “suitcase farmers” entered the market.<sup>14</sup> Suitcase farmers were non-resident owners who purchased large tracts of land and hired farmers to cultivate and farm that land.<sup>15</sup> Communities widely condemned this practice as not being true farming.<sup>16</sup>

Later, following the conclusion of World War II, another farming revolution began – a Green one.<sup>17</sup> During the Green Revolution, farming continued to industrialize with the introduction of fertilizers, pesticides, and herbicides, aimed at increasing yields.<sup>18</sup> Since this industrialization, large agricultural production facilities have swallowed up many of the pioneer Kansas farms.<sup>19</sup> This industrialization has caused Kansas farms to grow in size, but dwindle in number.<sup>20</sup>

A main driver in the reduction of smaller family farms is the entry of larger industrial agriculture corporations into the Kansas market.<sup>21</sup> Over the years,

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<sup>6</sup> Federal Writer’s Project, *History of Kansas Agriculture*, KAN. STATE HIST., <https://www.kspatriot.org/index.php/articles/48-kansas-agriculture/226-history-of-kansas-agriculture.html> [https://perma.cc/VGB9-LTC4].

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *See e.g., id.*

<sup>10</sup> *Homestead Act (1862)*, NAT’L ARCHIVES, [https://www.archives.gov/milestone-documents/homestead-act?\\_ga=2.28960380.1585839077.1759601832-1370338088.1756323436](https://www.archives.gov/milestone-documents/homestead-act?_ga=2.28960380.1585839077.1759601832-1370338088.1756323436) [https://perma.cc/D2TX-YMQ9].

<sup>11</sup> *Id.*

<sup>12</sup> Federal Writer’s Project, *supra* note 6.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Kenneth M. Sylvester & Paul W. Rhode, *Making Green Revolutions: Kansas Farms, Recovery, and the New Agriculture, 1918–1981*, 91 AGRIC. HIST. 342, 342 (2017).

<sup>18</sup> *Id.*

<sup>19</sup> *Right to Farm History of Harm*, SIERRA CLUB (2022), <https://www.sierraclub.org/sites/default/files/2022-10/Right%20to%20Farm%20History%20of%20Harm.pdf> [https://perma.cc/Y63B-3KYD].

<sup>20</sup> *See 1982 Census of Agricultural-State Data*, USDA CENSUS OF AGRIC. HIST. ARCHIVE (1982), [https://agcensus.library.cornell.edu/wp-content/uploads/1982-Kansas-CHAPTER\\_1\\_State\\_Data-121-Table-01.pdf](https://agcensus.library.cornell.edu/wp-content/uploads/1982-Kansas-CHAPTER_1_State_Data-121-Table-01.pdf) [https://perma.cc/PT8J-UNZ2].

<sup>21</sup> Dave Redmon, *Words of lament and hope for Kansas as big agriculture eradicated farmland traditions*, KAN. REFLECTOR (July 17, 2024, at 3:33 CT),

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agricultural production units have become larger and more complex, driving a shift from smaller independent farmers to larger operations.<sup>22</sup> This shift began in the 1960s, and the market continued to narrow, favoring fewer, larger producers.<sup>23</sup> Examples of such producers affecting Kansans include Cargill, CHS, Inc., ADM, and others.<sup>24</sup>

Right-to-Farm laws have been debated and analyzed in literature throughout the United States.<sup>25</sup> However, this literature does not focus on a variety of different industrial agriculture operations. Much of the literature focuses either on hog production facilities or concentrated animal feeding operations (CAFOs).<sup>26</sup> Moreover, the literature does not focus on the specific effects that Right-to-Farm laws have on Kansans.<sup>27</sup> Accordingly, this article seeks to bridge the gap by focusing on a variety of industrial agricultural operations that leverage the Kansas Right-to-Farm Act, and analyzing the Act's specific effects on Kansas communities and Kansas farmers.

Over the past 200 years, farming in Kansas has changed drastically. This article examines how these changes have negatively affected Kansans and how revisions to the Kansas Right-to-Farm Act could restore key values of Kansas farming. Part II outlines the problems that large agricultural production facilities bring to Kansas. Part III introduces the Kansas Right-to-Farm Act and its intended purpose. Part IV examines flawed provisions of the Kansas Right-to-Farm Act and their impact on Kansans. And part V proposes changes to the Act that both encourage agricultural production and protect Kansas communities and farmers.

### II. THE PROBLEM WITH LARGE AGRICULTURE PRODUCTION FACILITIES

Large agricultural production facilities are using their protection under the Act to squeeze out smaller farmers, but is this really a problem? There is no denying

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<https://kansasreflector.com/2024/07/17/words-of-lament-and-hope-for-kansas-as-big-agriculture-eradicates-farmland-traditions/> [<https://perma.cc/7X9V-LARD>].

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Top Agriculture Companies in Kansas*, GLASSDOOR, [https://www.glassdoor.com/Explore/top-agriculture-companies-kansas\\_IS.4,15\\_ISEC10003\\_IL.26,32\\_IS3107.htm](https://www.glassdoor.com/Explore/top-agriculture-companies-kansas_IS.4,15_ISEC10003_IL.26,32_IS3107.htm) [<https://perma.cc/TN2M-YJC4>].

<sup>25</sup> See Rusty Rumley, *Article: A Comparison of the General Provisions Found in Right-to-Farm Statutes*, 12 VT. J. ENV'T. L. 327 (2011); Neil D. Hamilton, *Right-to-Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May Be Ineffective*, 3 DRAKE J. AGRIC. L. 103 (1998); Madeleine Skaller, *Comment: Protecting the Right to Harm: Why State Right to Farm Laws Should Not Shield Factory Farms From Nuisance Liability*, 27 SAN JOAQUIN AGRIC. L. REV. 209 (2017).

<sup>26</sup> See e.g., Skaller, *supra* note 25.

<sup>27</sup> Rumley, *supra* note 25.

that these corporations provide the world with food and have positive impacts on the agricultural industry. The question is whether the negative effects these large facilities have on Kansas communities, local farmers, and Kansas as a whole outweigh the positive business effects.

### A. Historic Kansas Farms Dwindling

Kansas family farms are ingrained in the state's history. Many children grew up on the farm, then came back later in life and took the family business over.<sup>28</sup> This cycle was at the center of Kansas agriculture production for generations.<sup>29</sup> However, in the 1980s, cracks began to appear as farm foreclosures increased,<sup>30</sup> resulting in the generational cycle being replaced by larger industrial operations.<sup>31</sup>

Over the past 70 years, Kansas farms have declined by more than 50%, from over 100,000 in the 1960s to around 50,000 in 2022.<sup>32</sup> Yet, the total number of agricultural acres has remained steady, and the average size of Kansas farms has increased steadily.<sup>32</sup> This is evidence of the expansion of farms and the increase in larger industrial agriculture operations over mid-sized family farms. The character of these facilities differs from that of the farms the Kansas Right-to-Farm Act was intended to protect. They are not run by families who have passed the farm down through the generations. Rather, these facilities resemble factories.<sup>33</sup> This type of character change in the agricultural space negatively affects Kansas communities that were once supported by and ingrained in local agriculture. In the country, each of these large operations displaces 10 family farmers from the market.<sup>34</sup> This problem is not only prevalent in Kansas but can be seen throughout the country, where small farmers are prevented from entering or staying in the market.<sup>35</sup> Policies across the country have allowed large corporations to get bigger while pushing small farmers out.<sup>36</sup>

### B. What is a Large Industrial Agriculture Facility?

Industrial agricultural production facilities are characterized by their high production yield and large-scale production methods.<sup>37</sup> These facilities prioritize

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<sup>28</sup> See e.g., Kendall, *supra* note 5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 1982 Census of Agricultural-State Data, *supra* note 20.

<sup>33</sup> See *The Industrial Food System*, FOODPRINT (2024), <https://foodprint.org/the-total-footprint-of-our-food-system/issues/the-industrial-food-system/?cid=868> [<https://perma.cc/H889-HUDW>].

<sup>34</sup> *Are Factory Farms Still a Threat to America's Family Farmers?*, FARMAID (Aug., 2009), <https://www.farmaid.org/issues/industrial-agriculture/are-factory-farms-still-a-threat-to-americas-family-farmers> [<https://perma.cc/8YXR-ZWQE>].

<sup>35</sup> See WENDELL BERRY, *THE UNSETTLING OF AMERICA: CULTURE & AGRICULTURE* 223 (2nd ed. 1996).

<sup>36</sup> *Id.*

<sup>37</sup> *All You Need to Know About Industrial Agriculture*, [X]CUBE LABS (July 20, 2023), <https://www.xcubelabs.com/blog/all-you-need-to-know-about-industrial-agriculture/> [<https://perma.cc/W793-JA3L>].

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efficiency, productivity, and profitability.<sup>38</sup> The largest industrial agriculture facilities dominate the food supply chain and the market share through vertically integrated business models.<sup>39</sup> These facilities also employ high levels of modern technology to support a higher scale and output.<sup>40</sup> Another characteristic is market power and control. These corporations need to control the markets and maintain a concentration of power.<sup>41</sup> Industrial agricultural facilities are also typically owned and run by corporations.<sup>42</sup> These facilities are involved in a variety of agricultural supply chain steps, including grains, food processing, meat processing, ingredient processing, and food distribution.<sup>43</sup> An example of an industrial agricultural production facility is a concentrated animal feeding operation (CAFO).<sup>44</sup> A CAFO increases production efficiencies by housing around 1,000-2,500 animals in one facility.<sup>45</sup> To support the profit-first structure, animals are confined for multiple months out of the year.<sup>46</sup> These facilities are regularly associated with nuisances like odors and noise.<sup>47</sup>

### C. Large Industrial Agriculture Facilities in Kansas

There are many examples of large agricultural production facilities in Kansas, but this article will focus on three large contributors: Cargill, ADM, and Ingredion. These corporations have a heavy presence in Kansas and represent different parts of the agricultural supply chain, from production to processing to delivery. Additionally, these corporations are included to put a face to those who can and do take advantage of the Kansas Right-to-Farm Act.

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<sup>38</sup> *Id.*

<sup>39</sup> Candice Wilson, *Too Big to Fail: How Consolidation in the Agricultural Industry Has Created Unintended Consequences that Threaten Farmers, Consumers, and our National Security*, 28.2 DRAKE J. AGRIC. L. 171, 174, 201 (2023).

<sup>40</sup> Redmon, *supra* note 21.

<sup>41</sup> Emily M. Miller, THE TRUTH ABOUT INDUSTRIAL AGRICULTURE: A FRAGILE SYSTEM PROPPED UP BY MYTHS AND HIDDEN COSTS, FAM. FARM ACTION ALL. (July, 2021), <https://farmaction.us/wp-content/uploads/2021/07/Truth-Report.pdf> [<https://perma.cc/5MAJ-XXDH>].

<sup>42</sup> *Corporate Control in Agriculture*, FARM AID, <https://www.farmaid.org/issues/corporate-power/corporate-power-in-ag/> [<https://perma.cc/WDV3-7TRS>].

<sup>43</sup> *Who is ADM and What Do We Do?*, ADM, <https://www.adm.com/en-us/about-adm/> [<https://perma.cc/8C3S-4TML>]; *Meet Ingredion: Who we are*, INGREDION, <https://www.ingredion.com/na/en-us/company/meet-ingredion.html#:~:text=Ingredion%20is%20a%20leading%20global,corrugating%2C%20brewing%20and%20other%20industries> [<https://perma.cc/3Y9F-D9HW>]; *Cargill at a glance*, CARGILL, <https://www.cargill.com/about/cargill-at-a-glance> [<https://perma.cc/UE2F-EG9N>].

<sup>44</sup> *See Concentrated Animal Feeding Operation (CAFO)*, MO. DEP'T OF NAT. RES., <https://dnr.mo.gov/water/business-industry-other-entities/agriculture-landowners/concentrated-animal-feeding-operation-cafo> [<https://perma.cc/6GJL-FFH2>].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> BROTHER DAVID ANDREWS & TIMOTHY J. KAUTZA, IMPACT OF INDUSTRIAL FARM ANIMAL PRODUCTION ON RURAL COMMUNITIES 25 (2008).

### 1. Cargill

Cargill is one of the largest privately held companies in the world and controls much of the agricultural supply chain.<sup>48</sup> The company is involved in the agricultural supply chain with both processing and the manufacture of animal feed, among other things.<sup>49</sup> Cargill has a significant presence in Kansas with many operations across the state.<sup>50</sup> Some of their larger plants include a protein processing plant in Dodge City and an animal nutrition plant in Kansas City.<sup>51</sup> In addition to these larger plants, Cargill has smaller operations throughout the state like grain elevators.<sup>52</sup>

### 2. ADM

ADM has similar business lines to Cargill.<sup>53</sup> ADM produces food ingredients along with animal nutrition.<sup>54</sup> In addition to food solutions, ADM uses grains to produce industrial oils, ethanol, and biodiesel.<sup>55</sup> To support its product supply chain, ADM operates distribution services using boats, trains, and trucks.<sup>56</sup> ADM has a significant presence in Kansas; their presence across the country includes hundreds of grain elevators and processing facilities for agricultural products.<sup>57</sup> A large sector of ADM's business involves the agricultural supply chain, including the transport of grain and other agricultural products.<sup>58</sup>

### 3. Ingredion

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<sup>48</sup> Wilson, *supra* note 39, at 190.

<sup>49</sup> *Cargill at a glance*, *supra* note 42.

<sup>50</sup> *See generally Find a Location*, CARGILL (Nov. 24, 2024, at 19:07 CT), <https://www.cargillag.com/locations> [<https://perma.cc/6BMV-DP8T>].

<sup>51</sup> *Dodge City Protein Processing Plant*, CARGILL, <https://careers.cargill.com/en/dodgecity-ks> [<https://perma.cc/VQ78-7EME>]; *Cargill in Kansas City*, CARGILL, <https://careers.cargill.com/en/kcjobs> [<https://perma.cc/ZDM7-W6PV>].

<sup>52</sup> *See generally Find a Location*, *supra* note 51.

<sup>53</sup> *Compare Our Solutions Tailored to Your Needs*, ADM, <https://www.adm.com/> [<https://perma.cc/LS6S-DBY3>], with *Cargill at a glance*, *supra* note 42.

<sup>54</sup> *Our Solutions*, *supra* note 53.

<sup>55</sup> *Industrial Biosolutions*, ADM, <https://www.adm.com/en-us/products-services/industrial-biosolutions/products/> [<https://perma.cc/4F2C-ACNY>].

<sup>56</sup> *ADM's Transportation & Logistics*, ADM, <https://www.adm.com/en-us/products-services/services/transportation-logistics/> [<https://perma.cc/Y9BJ-HSHC>].

<sup>57</sup> *ADM Location Search*, ADM, [https://www.e-adm.com/srch/srch\\_lsearch.aspx?search\\_city=&search\\_state=Kansas&search\\_zip=&search\\_country=](https://www.e-adm.com/srch/srch_lsearch.aspx?search_city=&search_state=Kansas&search_zip=&search_country=) [<https://perma.cc/L32R-D768>]; *Farmer Services & Farming Solutions*, ADM, <https://www.adm.com/en-us/products-services/services/farmer-services/> [<https://perma.cc/Z3GP-F2JG>].

<sup>58</sup> *Who is ADM and What Do We Do?*, ADM, <https://www.adm.com/en-us/about-adm/> [<https://perma.cc/8C3S-4TML>].

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Another industrial agricultural corporation is Ingredion, a global ingredient solutions provider.<sup>59</sup> Ingredion focuses on the production of agricultural products into ingredients such as starches, sweeteners, and proteins.<sup>60</sup> Ingredion has a presence in Kansas with its North Kansas City processing plant.<sup>61</sup> This plant processes various agricultural products, including corn, into ingredient products such as starches and sweeteners.<sup>62</sup>

### D. Problems that Industrial Ag Bring to Kansas

Industrial agricultural corporations, under the protection of the Kansas Right-to-Farm Act, harm rural Kansas communities and Kansas farmers in a variety of ways.

#### 1. Impact on Communities

Historically, local agriculture has been ingrained in Kansas communities.<sup>63</sup> Once industrial agriculture begins taking over a market, a culture like this changes.<sup>64</sup> Life is negatively affected in many ways in communities where industrial agriculture takes over.<sup>65</sup> One Kansas man, Tom Giessel, recounts the community he grew up in and the life he built in rural Kansas.<sup>66</sup> He credits the loss of small Kansas farmers to the lack of individuality and teamwork in farming.<sup>67</sup> Before the economic boom of industrial farming, Giessel remembers a time when the health of a farm was reliant on the community around it.<sup>68</sup> With the consolidation of farm operations, that community and support system diminished.<sup>69</sup> When industrial agriculture enters communities, there is significant social change and disruption.<sup>70</sup> Evidence of this social disruption includes increases in crime rates, heightened stress and social-psychological issues, deterioration of relationships between farmers and their neighbors, reduced neighborly relations, a decline in community services, and

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<sup>59</sup> *Meet Ingredion: Who we are*, INGREDION, <https://www.ingredion.com/na/en-us/company/meet-ingredion.html#:~:text=Ingredion%20is%20a%20leading%20global,corrugating%2C%20brewing%20and%20other%20industries> [https://perma.cc/GU8K-U59K].

<sup>60</sup> *Id.*

<sup>61</sup> *Ingredion*, NORTH KANSAS CITY BUSINESS COUNCIL, <https://members.nkcbusinesscouncil.com/list/member/ingredion-163> [https://perma.cc/BY37-GVMJ].

<sup>62</sup> *Id.*

<sup>63</sup> Federal Writer's Project, *supra* note 6.

<sup>64</sup> Andrews & Kautza, *supra* note 47, at 25.

<sup>65</sup> *Id.* at 25–26.

<sup>66</sup> Calen Moore, *As Kansas farms grow bigger, more people leave and rural life gets lonelier*, KCUR (September 17, 2024, at 3:00 CDT), <https://www.kcur.org/2024-09-17/as-kansas-farms-grow-bigger-more-people-leave-and-rural-life-gets-lonelier> [https://perma.cc/L5GU-4ZXM].

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Andrews & Kautza, *supra* note 47, at 25.

diminished community trust and involvement.<sup>71</sup> Overall feelings of freedom and independence in people's homes deteriorate as residents' property values decline and they lose the enjoyment of their property.<sup>72</sup> Another issue that the Act (as well as other Right-to-farm legislation) presents for communities is the inability to vindicate the property interests of community members affected by large-scale industrial agriculture.<sup>73</sup>

## 2. *Impact on Kansas Farmers*

In addition to the negative impact on Kansas communities, the Act harms Kansas farmers.<sup>74</sup> When industrial agriculture enters the market, smaller conventional farmers are driven out by a demand for higher production output and higher profits.<sup>75</sup> Because of this high demand for profit and production, small farmers are unable to keep up, especially with the consolidation and mechanization these industrial agricultural operations invest in.<sup>76</sup> Income for all Kansas operators except the largest has continued to fall, leading to debt-saddled farmers who are unable to keep up with their expenses.<sup>77</sup> This situation puts pressure on Kansas farmers and creates a challenging and stressful environment for farmers to maintain their farms,<sup>78</sup> as is evidenced by the outcomes of right-to-farm laws. These laws offer immunity to industrial agriculture corporations and favor them over local farmers.<sup>79</sup>

### III. BACKGROUND AND PURPOSE OF THE KANSAS RIGHT TO FARM ACT

Right-to-Farm laws are prevalent nationwide and generally serve similar purposes.<sup>80</sup> Each act is meant to protect small farmers; however, most give unintended benefits to industrial agricultural corporations.<sup>81</sup> Like many states, Kansas's Right-to-Farm Act provides leniency for corporations and harms small Kansas farmers.<sup>82</sup>

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 26; *Right to Farm History of Harm*, *supra* note 19 at 4.

<sup>73</sup> Ginger Pinkerton, *Note: Sanctioning Nuisance: How the Modern Right to Farm Impermissibly Burdens Neighbors*, 72 CASE W. RESV. L. REV. 141, 144 (2021); Richard LeComte, *Family Farms or Big Agriculture? Rural Sociologist Examines Uses of Right-to-Farm Laws in Courts*, UNIVERSITY OF KENTUCKY COLLEGE OF ARTS AND SCIENCES, <https://www.as.uky.edu/family-farms-or-big-agriculture-rural-sociologist-examines-uses-right-farm-laws-courts> [https://perma.cc/24BD-EK7L].

<sup>74</sup> Redmon, *supra* note 21.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Kendall, *supra* note 5.

<sup>79</sup> Loka Ashwood & Danielle Diamond, *Right-to-Farm laws run counter to rural cultural and property rights*, ENV'T HEALTH NEWS (Apr. 11, 2019), <https://www.ehn.org/right-to-farm-laws-failing-rural-people-2634037860.html> [https://perma.cc/TE9Y-QQGZ].

<sup>80</sup> Ross H. Pifer, *Right to Farm Statutes and the Changing State of Modern Agriculture*, 46 CREIGHTON L. REV. 707, 710 (2013).

<sup>81</sup> LeComte, *supra* note 73.

<sup>82</sup> *Id.*

### A. Background of Right-to-Farm Acts Generally

Every state in the United States has enacted some form of a Right-to-Farm law.<sup>83</sup> Each law generally protects agricultural activities from nuisance lawsuits.<sup>84</sup> A nuisance would include a loud noise or odor that interferes with someone's use or enjoyment of their property.<sup>85</sup> The level of protection varies from state to state. Some states place limits, specifically narrowing protection through definitions, while others do not.<sup>86</sup> Generally, right-to-farm laws do not impose size limitations on operations that receive protection.<sup>87</sup> Nationwide, these right-to-farm acts have been found to protect industrial agriculture on a high level.<sup>88</sup> In a recent study of 306 cases in which right-to-farm laws were at issue, more than half involved industrial agricultural operations.<sup>89</sup> This level of protection for industrial operations not only hurts surrounding communities and homeowners but also hurts surrounding farmers.<sup>90</sup> The protection negatively affects surrounding communities and homeowners because it reduces their ability to sue for nuisance, leaving those affected with no legal recourse.<sup>91</sup> Negative effects on farmers include being pushed out of markets, downward pressure on product sales prices, lower negotiating power, and less control over contracts they enter.<sup>92</sup> In response, communities around the country are coming together to push for change.<sup>93</sup> Not only is this response happening nationwide, but Kansas communities are reacting in the same way.<sup>94</sup>

### B. The Purpose of the Kansas Right to Farm Act

Similar to the nationwide purpose, the Kansas Right-to-Farm Act's stated purpose is to "conserve and protect and encourage the development and improvement of farmland."<sup>95</sup> The Act specifically focuses on the "production of food and other agricultural products."<sup>96</sup> The Kansas Right-to-Farm Act was enacted to protect farmland and agricultural activities from the encroachment of nearby cities

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<sup>83</sup> Pifer, *supra* note 80, at 710.

<sup>84</sup> *Id.*

<sup>85</sup> *Nuisance*, BLACK'S LAW DICTIONARY (12th ed. 2024).

<sup>86</sup> Rumley, *supra* note 25, at 329–331.

<sup>87</sup> Hamilton, *supra* note 25, at 112.

<sup>88</sup> LeComte, *supra* note 73.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Andrews & Kautza, *supra* note 47, at 13.

<sup>93</sup> Leah Douglas, *Big Ag Is Pushing Laws To Restrict Neighbors' Ability To Sue Farms*, NPR (April 12, 2019, at 7:00 AM EST), <https://www.npr.org/sections/thesalt/2019/04/12/712227537/big-ag-is-pushing-laws-to-restrict-neighbors-ability-to-sue-farms> [<https://perma.cc/AHX8-R5NN>].

<sup>94</sup> *Id.*

<sup>95</sup> KAN. STAT. ANN. § 2-3201.

<sup>96</sup> *Id.*

and suburbs.<sup>97</sup> The purpose is to prevent nuisance lawsuits against beneficial agricultural activity.<sup>98</sup> The legislature believed that agricultural activities needed protection from nuisance suits arising from the expansion of non-agricultural activities.<sup>99</sup> The legislature did not want to see nuisance suits from suburban developments put farms out of business.<sup>100</sup> It is important to read this purpose in light of when the Act was enacted in the early 1980s.<sup>101</sup>

During the early 1980s, agriculture was substantially different than the mechanized and industrialized agriculture we see today.<sup>102</sup> This difference in agriculture has raised questions regarding the Act's original purpose, specifically regarding what constitutes agricultural activity and what type of activity deserves protection.<sup>103</sup> These questions likely arise from the actual effects of the Kansas Right-to-Farm Act: large farming operations continue to grow, while smaller farmers are pushed out of the market.<sup>104</sup> Originally, the Act was intended to protect smaller farmers who lack the resources to defend against nuisance suits; however, smaller farmers are not the only participants in agricultural activities.<sup>105</sup> The Act declares that agricultural activities conducted in a manner consistent with good agricultural practices are "presumed to be reasonable and shall not be found to constitute a nuisance," effectively preventing recovery for nuisance claims, including those based on odors or noise, arising from such activities.<sup>106</sup> The definition of an "agricultural activity" includes the growing or raising of crops, poultry, livestock, and dairy products for personal or commercial purposes.<sup>107</sup> This includes any activity that is related to the handling, storage, and transportation of agricultural commodities.<sup>108</sup> This means that from birth or planting to the consumer's hands, anyone who touches the protected products is protected by the Act.

The Kansas Right-to-Farm Act facilitates industrial agriculture through its enumerated exceptions to restrictions placed on protected agricultural activities.<sup>109</sup> Agricultural activities must not have a substantial adverse effect on public health and safety.<sup>110</sup> While these restrictions were meant to help smaller farmers and restrict larger industrial corporations, the exceptions have had no such effect, and instead, the Act has deviated from its original intent.<sup>111</sup> The statute says that there is no substantial adverse effect on public health and safety if the activity conforms with the laws.<sup>112</sup> This definition leaves plenty of room for activities to have adverse

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *See generally* Pifer, *supra* note 80.

<sup>102</sup> *Id.* at 708.

<sup>103</sup> *Id.* at 709.

<sup>104</sup> Redmon, *supra* note 21.

<sup>105</sup> LeComte, *supra* note 73.

<sup>106</sup> KAN. STAT. ANN. § 2-3202.

<sup>107</sup> *Id.* § 2-3203.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* § 2-3202.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*; *Right to Farm History of Harm*, *supra* note 19, at 4.

<sup>112</sup> KAN. STAT. ANN. § 2-3202.

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effects, but still comply with local laws.<sup>113</sup> Another restriction requires the agricultural activities to be established before the surrounding activities to receive protection.<sup>114</sup> Surrounding activities may include encroaching subdivisions, small neighboring farms, or other neighboring communities. Protection is only given to established agricultural activities where surrounding activities had prior notice of their existence.<sup>115</sup> This provision seems helpful, but is rendered useless through other relevant exceptions.

The two other relevant exceptions are the expansion provision and the assignment provision.<sup>116</sup> These exceptions essentially nullify the requirement that the activity precede any surrounding activities.<sup>117</sup> The assignment provision allows any successor or interest holder to assign or transfer their protections under the Act.<sup>118</sup> This means that any smaller farmers being squeezed out of the market and forced to sell will transfer their protection to large industrial agriculture operations that purchase their land.<sup>119</sup> There are no restrictions on assignment or transfer, so any industrial agriculture operation can operate as if it were in place before any surrounding activity.<sup>120</sup> The expansion provision permits any agricultural activity to expand its scope or change its overall character while maintaining protection.<sup>121</sup> These provisions allow both a preexisting small family farm and a new industrial agricultural operation to maintain identical protections under the Act, regardless of legislative restrictions. This level of flexibility is likely to encourage Kansas agriculture by removing barriers, but the result goes beyond the intent.

### 1. *The Actual Effect of Right-to-Farm Acts*

The actual effect of the Kansas Right-to-Farm Act is becoming increasingly distant from the original intended purpose: to protect small farmers.<sup>122</sup> Increasingly, rural communities in Kansas are dwindling, losing hotels, restaurants, churches, and stores.<sup>123</sup> Alongside a general community breakdown, small farmers are disappearing from the market, while farm sizes are increasing.<sup>124</sup> Agricultural markets are consolidating into fewer and larger producers.<sup>125</sup> These small farmers began being pushed out of the market in the 1980s, evidenced by an escalating

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> LeComte, *supra* note 73.

<sup>120</sup> KAN. STAT. ANN. § 2-3202.

<sup>121</sup> *Id.*

<sup>122</sup> Skaller, *supra* note 25, at 209.

<sup>123</sup> Redmon, *supra* note 21.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

number of farm foreclosures.<sup>126</sup> These smaller farmers simply cannot keep up with the shift to an industrialized, larger operation.<sup>127</sup> Large agricultural operations require higher fixed costs and a demand for higher production, demands that industrial operations easily meet, while smaller farmers struggle.<sup>128</sup>

At the core of these issues sits industrial agricultural operations.<sup>129</sup> Industrial agricultural operations take advantage of Kansas's right-to-farm laws intended to protect family farms.<sup>130</sup> The Act's definition of "agricultural activity" includes anything that is involved in the agricultural process from start to consumer.<sup>131</sup> Because of how general the definition is, it includes industrial agricultural operations.<sup>132</sup> These operations can easily overcome restrictions meant to limit protection to the fundamental purpose of right-to-farm laws: protection of the small farmer.<sup>133</sup> Because these operations avoid nuisance liability, they can change the size and scope of their operation as much as they want, and create as many nuisances as they would like, without consequence.<sup>134</sup> This flexibility is also likely intended to increase agricultural activity in Kansas, but the outcome goes beyond that. This has left Kansas farmers and communities without recourse or protection under an Act designed to protect them.

#### IV. Lenience of the Kansas Right to Farm Act

The Kansas Right-to-Farm Act provides exceptions for almost every restriction.<sup>135</sup> Owners may multiply or change the scope of their activity and assign or transfer their protections.<sup>136</sup> Provisions similar to these remove from community members almost all legal recourse to protect their communities.<sup>137</sup> The protective barrier protects against frivolous suits, as it was intended to do, but also restricts valid suits, which are the only means by which a community protects itself.

##### A. Specific Lenient Provisions

The Kansas Right-to-Farm Act has three areas of exceptional leniency: the expansion provision, the transfer provision, and the broad definition of what constitutes an "Agricultural Activity." These lenient provisions essentially nullify any of the "restrictive" measures included in the Act, like the requirement of prior existence, good agricultural practices, and not having a substantial adverse effect<sup>138</sup>

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<sup>126</sup> Kendall, *supra* note 5.

<sup>127</sup> Andrews & Kautza, *supra* note 47, at 11.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> LeComte, *supra* note 73.

<sup>131</sup> KAN. STAT. ANN. § 2-3203.

<sup>132</sup> *Id.*

<sup>133</sup> Danielle Diamond, Loka Ashwood, Allen Franco, Lindsay Kuehn, Aimee Imlay & Crystal Boutwell, *Agricultural Exceptionalism, Environmental Injustice, and U.S. Right-to-Farm Laws*, 52 ENV'T. L. REP. 10727, 10728 (2022).

<sup>134</sup> *Id.* at 10733.

<sup>135</sup> KAN. STAT. ANN. § 2-3202.

<sup>136</sup> *Id.* § 2-3203.

<sup>137</sup> Douglas, *supra* note 93.

<sup>138</sup> KAN. STAT. ANN. § 2-3203.

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1. *Expansion Provision*

The Kansas Right-to-Farm Act allows farms to maintain their protection regardless of any expansion in scope, acreage, animals, or activities.<sup>139</sup> The Act provides no limits on the amount of expansion that an agricultural facility may undertake.<sup>140</sup> Nor does the Act provide restrictions on how drastically a change in agricultural activities may be.<sup>141</sup> This leniency allows agricultural operations with minimal activities to scale up and create significant nuisances while maintaining protections.<sup>142</sup> Meanwhile, neighbors who had no notice of this potential nuisance problem are left without legal recourse.<sup>143</sup> The market has taken advantage of this level of expansion allowed by the Act and has increasingly forced smaller producers out.<sup>144</sup> The lack of expansion restrictions reinforces the pattern of farms getting smaller in number and larger in size.<sup>145</sup> Today, a farm size of 1000 acres is no longer enough to play with the big dogs.<sup>146</sup>

This expansion allowance is contrary to the stated purpose of the Act. The Act intended to protect existing farmers from encroaching suburban activity.<sup>147</sup> The effect of allowing unlimited expansion does the opposite, as it no longer protects surrounding landowners and farmers from large agricultural operations.<sup>148</sup>

An example of the above provision at work is the following: A family moves to an agricultural area adjacent to a farm. Under the Act, this family would be considered on notice and, accordingly, could not bring nuisance claims against the farm in the future. This is a logical result that aligns with the Act's purpose. But what happens if this farm starts expanding operations and decides to go into the hog production business? Suddenly, this family cannot enjoy their property because of nuisances from the newly expanded farm. Contrary to the Act's purpose and the logical conclusion, this family lacks legal recourse, even though they were not on notice of these nuisances. The Act's original purpose is valid and produces logical results. The lenient expansion provision, however, undermines the Act's purpose and yields illogical results.

2. *Transfer/Assignment Provision*

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Diamond, *supra* note 133.

<sup>143</sup> Pinkerton, *supra* note 73.

<sup>144</sup> *Id.*

<sup>145</sup> Redmon, *supra* note 21.

<sup>146</sup> *Id.*

<sup>147</sup> KAN. STAT. ANN. § 2-3201.

<sup>148</sup> Diamond, *supra* note 133; Redmon, *supra* note 21.

The Act also allows protections to be assigned or transferred.<sup>149</sup> Accordingly, while the agricultural activity must have been previously established, protection under the Act may be transferred to any agricultural activity that was not previously established.<sup>150</sup> This lenience allows large agricultural production facilities to come in, buy out family farms, and maintain their previous protection.<sup>151</sup> This transfer provision, like the expansion provision, ignores the Act's purpose and yields illogical results.

An example of the provision at work would be the following: Take the family from the above example, under this provision, if, after moving next to a small farm, the owner of the farm chooses to sell to a large hog production facility, both the property interest in the land and the right to protection under the Act are transferred. As a result, an illogical and negative result ensues as the family is left without a legal recourse when they had no notice that they would be moving next to an industrial agricultural facility.

### 3. Definition of "Agricultural Activity"

The Act defines "Agricultural activity" to include "growing or raising of...agricultural crops, hay, poultry, and livestock" and "livestock, poultry, and dairy products for commercial purposes."<sup>152</sup> The definition does not stop there; rather, it includes any "activities related to the handling, storage, and transportation of agricultural commodities."<sup>153</sup> This last sentence broadens the definition greatly to include a multitude of industrial ag corporations in addition to large production companies that would already be included in the first part of the definition.

## B. Compounding Effect of Lenient Provisions

This leniency shelters large agricultural production facilities and allows them to enter the market and expand, no matter how large, while community members have no legal remedy to protect their communities. Each of these provisions, on its own, may not seem drastic, but when combined, they have drastic effects on Kansas communities. The most powerful combination is the ability to transfer protection freely and then expand and change the scope of activities. This allows for a modest-sized farm to sell its land and transfer its interest to a large industrial agriculture operation, which is then entitled to receive the same nuisance protection.<sup>154</sup> This combination of exceptions causes this scenario, and it is something you can see happening in Kansas and throughout the country.<sup>155</sup> The broad category inclusion in the definition of Agricultural Activities contributes to the capacity for industrial agriculture facilities to prevail on Right-to-Farm claims.<sup>156</sup>

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<sup>149</sup> KAN. STAT. ANN. § 2-3202.

<sup>150</sup> *Id.*

<sup>151</sup> Skaller, *supra* note 25.

<sup>152</sup> KAN. STAT. ANN. § 2-3203.

<sup>153</sup> *Id.*

<sup>154</sup> *See* KAN. STAT. ANN. § 2-3202.

<sup>155</sup> Skaller, *supra* note 25, at 209–10.

<sup>156</sup> Diamond, *supra* note 133, at 10732.

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If the definition were narrower, large industrial plants might fall outside the protections, making them unshielded despite the expansion and transfer provisions. However, this is not the case in Kansas.

### V. HOW TO PROTECT KANSAS AGRICULTURE AND KANSAS FARMERS

Finding the best solution is not an easy task, especially because the Act, at times, protects not only industrial agriculture, but also those farmers who actually need it. The Act provides necessary protection for hundreds of small Kansas farmers, so the solution must balance those needs. There have been some recent decisions regarding the Kansas Right-to-Farm Act, and it is important to evaluate these developments. It is also important to determine what the solution cannot be before recommending a possible solution.

#### A. Recent Developments

A recent Kansas Supreme Court case, *Ross v. Nelson*, addressed the Kansas Right-to-Farm Act and its limits.<sup>157</sup> In *Ross*, an industrial hog farmer decided to use hog waste to fertilize his nearby farmland.<sup>158</sup> To facilitate this, he piped the waste underground to spray on his nearby land.<sup>159</sup> The hog farmer was sued for trespass and nuisance due to this fertilization method.<sup>160</sup> He argued protection under the Kansas Right-to-Farm Act, but the Kansas Supreme Court found his use of pipes to constitute trespass; therefore, he was offered no protection under the Act.<sup>161</sup> News articles reported this decision as limiting the Act and a win for Kansas communities in the fight against industrial agriculture.<sup>162</sup> However, the case does not directly address or condemn the Act's leniency; rather, it was decided on trespass law.<sup>163</sup> The Kansas Right-to-Farm Act only protects activity “undertaken in conformity with federal, state, and local laws.”<sup>164</sup> The court found that the activity by the respondent

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<sup>157</sup> *Ross v. Nelson*, 554 P.3d 636 (Kan. 2024).

<sup>158</sup> *Id.* at 641.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> See generally Roger McEowen, *Firm to Farm: Kansas Supreme Court Upholds Property Rights*, RFD TV (Aug. 28, 2024 12:02 PM), <https://www.rfdtv.com/business/blogs/firm-to-farm/kansas-supreme-court-upholds-property-rights> [<https://perma.cc/MGW2-326V>]; Jason Alatidd, *Kansas right-to-farm law doesn't protect farmer's liquified hog waste pipeline*, TOPEKA CAPITAL-J. (Aug. 24, 2024 4:10 AM), <https://www.cjonline.com/story/business/agricultural/2024/08/24/kansas-right-to-farm-law-doesnt-protect-hog-farmers-wastewater-pipe/74917883007/> [<https://perma.cc/3K9X-F9X8>]; Tim Carpenter, *Kansas Supreme Court closes valve in protracted dispute on illegal hog-effluent pipeline*, LAWRENCE TIMES (Aug. 30, 2024) <https://lawrencekstimes.com/2024/08/30/kssupct-hog-pipeline/> [<https://perma.cc/6NTF-VLB2>].

<sup>163</sup> *Ross*, 554 P.3d at 641.

<sup>164</sup> KAN. STAT. ANN. § 2-3202.

was illegal and decided the case based on that.<sup>165</sup> The Court determined that the industrial farmer maintained no protection under the Act due to the illegality of his actions, not necessarily because the Act was too lenient or afforded protection to the wrong category of farmers.<sup>166</sup> While *Ross* does not limit or reconsider the Act's protection, the case indicates a change in the tide. It shows how ripe this issue is for Kansans. Even though the Court did not seem willing to limit or address the Right-to-Farm Act, it seems to signal the intent to protect those made victims of industrial agricultural nuisance. Kansas communities care about this issue, which is why a workable solution is needed.

## B. What the solution cannot be

### 1. Repeal the Act

The problems with the Kansas Right-to-Farm Act cannot be solved by repealing it altogether. The original purpose of the Act, to protect farmers from expanding suburban activities, is still furthered through the Act.<sup>167</sup> Those farmers still need that protection from nuisance suits. It is not the local farmers' fault that the Kansas legislature has made the Act so broad and lenient that large agricultural corporations fall under its protection. If the legislature eliminated the Act, small farmers would be exposed to nuisance suits for reasonable farming activities. This liability would likely push more farmers out of the market as profit margins are already slim. The solution must encourage and protect small farmers from both nuisance suits and large industrial agriculture corporations.

### 2. Restricting the Right to Transfer/Assign

The solution also must not restrict the allowance of a transfer or assignment of protection under the Act. While the goal is to keep as many small Kansas farmers in the market as possible, farmers will still need to sell their farms. Restricting their right to transfer this protection reduces the profit they could realize from the sale and may deter the sale altogether. If a large corporation or even another small farm is coming in to buy the farm from a retiring farmer, it does everyone a disservice to disallow that retiring farmer from transferring their protection. If that protection may not be transferred to another small Kansas farmer, the purpose of the Act is equally thwarted. The solution must not restrict the Kansas farmer; rather, it must protect and bolster them.

## C. Possible Solutions

This section will cover many possible solutions to the over-lenient Kansas Right-to-Farm Act. The first solution comes from examining other states' laws. Every state has right-to-farm laws that vary from ultra-lenient to Kansas-level lenient to narrow.<sup>168</sup> Many of these states have laws that would help solve the issues

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<sup>165</sup> *Ross*, 554 P.3d at 641.

<sup>166</sup> *Id.* (“This trespass, in turn, precludes him from relying on the presumption of “good agricultural practice” under the right-to-farm statutes. To rely on that presumption, the statute requires conformity with all applicable laws, a condition Nelson's trespass violates.”).

<sup>167</sup> KAN. STAT. ANN. § 2-3201.

<sup>168</sup> Rumley, *supra* note 25, at 328.

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in Kansas. Additional solutions come directly from issues found in the Kansas Act itself.

First, Kansans should consider specifically defining what nuisances are not permitted. This maintains protection from nuisance suits but outlines the standard that both farms and industrial agriculture facilities must hold themselves to. Another possible solution would be a restriction of the expansion provision. This solution would support the purpose of the Act and protect the surrounding communities from becoming neighbors to an ever-expanding production facility of which they had no notice. Finally, Kansas could statutorily outline alternative dispute resolution. This would give communities legal recourse while still protecting farms from costly nuisance suits.

### *1. Other States' RTF Laws*

New Jersey provides farmers and communities alike with an agricultural mediation program.<sup>169</sup> This process has had much success in New Jersey, where most Right to Farm claims need a single mediation session.<sup>170</sup> Claims brought to mediation under this program include signs, farm buildings, equine activities, water runoff, manure, flies, odors, etc.<sup>171</sup> Applying this process may help Kansas by providing another outlet for the community that is cheaper and faster.

Florida's Right-to-Farm laws provide for specific limitations on how much expansion a farming operation may have.<sup>172</sup> The Act restricts an operation from expanding its operation regarding noise, odor, dust, or fumes.<sup>173</sup> This specifically applies where there is an established homestead or business adjacent.<sup>174</sup> This expansion limitation is not excessive but seems to solve many leniency problems. This type of limitation would maintain the purpose of the Kansas Right-to-Farm Act by protecting farmers while giving communities a recourse when an unexpected nuisance arrives near them.

Maine limits the applicability of the statute when there is a material change in the operation.<sup>175</sup> If a farm expands enough that the conditions or nature of the farm have materially changed, there is no protection under the Act.<sup>176</sup> Similarly, Vermont,

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<sup>169</sup> *New Jersey Agricultural Mediation Program Handbook*, N.J. DEP'T OF AGRIC., STATE AGRIC. DEV. COMM., <https://www.nj.gov/agriculture/sadc/documents/agmediation/handbook.pdf> [<https://perma.cc/KFU7-5UEQ>].

<sup>170</sup> *Id.* at 2.

<sup>171</sup> *Id.* at 6.

<sup>172</sup> FLA. STAT. § 823.14.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> ME. REV. STAT. tit. 7, § 153.

<sup>176</sup> *See id.*

prior to a 2025 legislative change, restricted protection when there was a significant change in a farm's operations.<sup>177</sup> This type of limitation may help Kansas in restricting industrial agriculture from expanding without limitation, but it may not be enough to resolve the leniency issues.

The Connecticut Right-to-Farm Act limits the protections for activities that are "used in normal, generally acceptable farming."<sup>178</sup> This definition limits what activities are protected, but may not be specific enough to exclude industrial agriculture operations. Minnesota includes a similar provision limiting protection to "generally accepted agricultural practices."<sup>179</sup> This limitation may help the Kansas Act, but might still be too lenient, as "normal" or "generally accepted" may include industrial agriculture operations. West Virginia includes a unique provision that limits protection when physical property damage is involved.<sup>180</sup> This provides more protection than the current Kansas Right-to-Farm Act, but likely would not solve the current problems with industrial agriculture corporations.

## 2. *Provide disallowed nuisances*

Like Florida's Right-to-Farm law, where certain types of expansions of odor, noise, dust, etc., are deemed actionable nuisances, Kansas could adopt a similar limitation. Kansas could implement an expansion limitation when an operation expands its operations regarding odor, noise, and other visual nuisances. Kansas could also include a limitation on these types of nuisances, regardless of expansion, and apply the limitation to general operations. This broad limitation would likely constrain industrial agricultural operations and the nuisances they generate, but it may harm farmers whom the Act seeks to protect. Small Kansas farmers would be harmed because they would likely produce some type of nuisance and be sued without the protection the Act was meant to provide.

## 3. *Restrict expansion provision*

The potentially most effective restriction would be limiting the expansion provision. A limit on this could be applied to both existing farms and farms that had protection transferred or assigned to them. Limiting the expansion provision allows the transfer and assignment provision to continue, but limits industrial operations from taking advantage. The best way to avoid adversely affecting farmers is to apply the limitation only to large expansions. Limiting any expansion at all would negatively affect farmers too much and limit their ability to make a profit. If the restriction applies to significant or material expansions or changes, farmers would

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<sup>177</sup> VT. STAT. ANN. tit. 12, § 5753; *The Regulatory Environment for Farms is Changing Beneath Our Feet in Vermont: Agricultural Exemption from Municipal Zoning, Act 250, Current Use, Nuisance Protections, and Jurisdiction over Agricultural Regulation*, RURAL VT, <https://www.ruralvermont.org/from-the-statehouse-blog/2025/6/9/2025-end-of-session-recap> [https://perma.cc/NYV3-J9JK].

<sup>178</sup> CONN. GEN. STAT. § 19a-341.

<sup>179</sup> MINN. STAT. § 561.19.

<sup>180</sup> W. VA. CODE § 19-19-4.

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still be protected to expand their operations, but industrial operations would no longer be protected.

4. *Alternative Dispute Resolution*

Another potentially effective solution would be to provide for, or even require, an alternative dispute resolution process or a mediation process. Alternative dispute resolution would encourage parties to settle outside of court, saving time and resources. This would provide a remedy for neighbors who have been harmed, while also protecting small farmers from the costs of litigation. The best way to enforce this would be to statutorily require that type of resolution. This would give community members a legal recourse to nuisance issues, but would protect farmers from nuisance litigation. However, for this process to be effective, the legislature would need to be specific and provide solutions for community members. Even though it would likely minimize litigation costs for farmers, it could still open the door to excessive claims that may still harm farmers.

**D. Best Solution for Kansas**

The best solution for Kansas farmers, the Kansas community, and the agricultural industry is to limit protections for operations that materially and substantially expand their operations. This preserves the original purpose of the Act, to protect Kansas farmers from expanding suburban activities, and limits protection for industrial agricultural activities. Limiting the restriction to material and substantial expansions preserves farms' ability to moderately expand operations while remaining profitable. With this modified restriction, industrial agricultural corporations would be limited in their negative effects on communities, and Kansas farmers would be given a better chance to stay competitive in the market.

**VI. CONCLUSION**

Childhood memories of time on the farm, like those I experienced, are becoming increasingly rare in Kansas. The shift away from family farming is not just a nostalgic loss but a systemic problem tied to the rise of industrial agriculture production facilities. Large-scale agricultural operations have contributed to the steady decline of historic Kansas farms. While Kansas legislation, like the Kansas Right-to-Farm Act, purports to protect small Kansas farms, it has instead facilitated industrial agriculture operations at the expense of small, family-owned farms that once formed the backbone of rural communities. Lenient provisions in the Kansas Right-to-Farm Act allow industrial agricultural corporations to exploit protections intended for small Kansas farms.

To protect Kansas farms, changes to the Kansas Right-to-Farm Act are necessary. The solution to the issue cannot be to repeal the act or to restrict the right to transfer or assign protection rights. Both would negatively impact small Kansas farmers. Possible solutions include looking to other state right-to-farm laws. Other states disallow specific nuisances, some restrict expansion of operations, and others

require alternative dispute resolution. The solution that would best protect Kansas farmers and Kansans is to limit protections for operations that materially and substantially expand their operations. Limiting major expansion protects small farmers even when they do grow their operations. Conversely, limiting expansion removes from large operations the ability to buy protections from historic Kansas farms and drastically expand their operations, creating nuisances for the community. The goal must be to protect small Kansas farms and Kansas agriculture while protecting Kansans. Achieving this goal would bring back the culture of Kansas farming and allow others to form childhood memories like mine.