

**2-3205. Exclusive compensatory damages for nuisance originating from farmland used for agricultural activity; standing.** (a) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from farmland primarily used for agricultural activity shall be as follows:

- (1) If the nuisance is determined to be a permanent nuisance, compensatory damages shall be limited to the reduction in the fair market value of the claimant's property caused by such nuisance, not to exceed the fair market value of such claimant's property; and
- (2) if the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the lesser of:
  - (A) The diminution in fair rental value of the claimant's property caused by such nuisance;
  - (B) the value of the loss of the use and enjoyment of the claimant's property; or
  - (C) the reasonable cost to repair or mitigate any injury to the claimant caused by such nuisance.
- (b) If any claimant or claimant's successor in interest brings a subsequent nuisance claim against the same defendant or defendant's successors in interest for an alleged nuisance related to the same or a substantially similar agricultural activity, such claimant and claimant's successors in interest shall be limited to the compensatory damages for a permanent nuisance as provided in subsection (a)(1). Damages from any previous final court order or judgment against the defendant or defendant's successors in interest shall be considered in any subsequent case for the purposes of determining that the total amount of damages awarded shall not exceed the fair market value of such claimant's property.
- (c) If a defendant in a private nuisance case where the nuisance is alleged to originate from farmland used for agricultural activity demonstrates a good faith effort to abate a condition that is determined to constitute a nuisance, and such good faith effort is unsuccessful, such nuisance shall be deemed to be not capable of abatement and compensatory damages shall be limited as provided in subsection (a)(1). Substantial compliance with a court order regarding such farmland shall constitute a good faith effort as a matter of law.
- (d) No person shall have standing to bring an action for private nuisance pursuant to this section unless such person has an ownership interest in the property alleged to be affected by the nuisance.
- (e) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.
- (f) This section shall be part of and supplemental to article 32 of chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

**History:** L. 2013, ch. 93, § 1; July 1.