WEST VIRGINIA CODE CHAPTER 19 ARTICLE 19

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§19-19-1. Purpose; public policy.

Whereas, Agricultural production of food and fiber is a basic necessity to sustain human life, and essential to the general welfare and stability of this state and the citizens thereof, and the continued conduct of the utilization of land in the conduct of agricultural production, including woodland and forestry production, is a necessity to the welfare and common good of all of the citizens of this state; and,

Whereas, The infringement upon agricultural lands and agricultural operations by other uses and occupancies which are either adverse or incompatible with the continued agricultural utilization may be of such nature as to endanger orderly agricultural production, it is hereby declared to be the public policy of this state that agricultural production and the utilization of land in agricultural productive operations be protected and preserved.

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§19-19-2. Definitions.

For the purposes of this article:

(a) "Agriculture" shall mean the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices.

(b) "Agricultural land" shall mean any amount of land and the improvements thereupon, used or usable in the production of food, fiber or woodland products of an annual value of $1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this section.

(c) "Agricultural operation" shall mean any facility utilized for agriculture.

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§19-19-3. Temporary change of agricultural operations.

The change of agricultural land use to a differing agricultural use, including rotation or lying fallow from time to time, shall not constitute abandonment as agricultural land or limit the change to any other agricultural use.

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§19-19-4. Agriculture not adverse; limitation of actions.

The conduct of agriculture upon agricultural land shall not be deemed adverse to other use or uses of adjoining or neighboring land, whether such other land be used or occupied for residential, commercial, business or for governmental, or any uses other than agricultural. No complaint or right of action shall be maintained in any court of this state against the owner or operator of agricultural lands adverse to the conduct of agriculture upon agricultural lands, unless:

(1) The complainant's use and occupancy of land of the complainant has existed upon his adjoining or neighboring land before the agricultural operation complained of upon the agricultural land; and

(2) The conduct of such agricultural operation complained of has caused or will cause actual physical damage to the person or property of the owner or occupant of such adjoining or neighboring lands.

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§19-19-5. Duties of owner or operator maintained.

Nothing in this article shall be construed to excuse or relieve the owner or operator of any agricultural lands from any other right or duty as to any other person or persons, and shall apply only to the right to conduct the practice of agriculture upon his agricultural lands, and the rights and duties of such owner or operator shall be in all other respects maintained as to any other person or persons or entity.

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§19-19-6. Liability for damage or destruction of sylvicultural or agricultural field test crop; damages.

(a) Any person or legal entity who willfully and knowingly damages or destroys, or allows an instrumentality within his or her control to damage or destroy a sylvicultural or agricultural field test crop that is grown for personal purposes, commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local government agency, shall be liable for twice the market value of the crop damaged or destroyed prior to damage or destruction, as determined by a court of competent jurisdiction, plus interest and reasonable court costs. Where the damaged or destroyed crops are grown for testing or research purposes, damages shall also include twice the actual damages relating to production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed.

(b) The rights and remedies available under this section are in addition to any other rights or remedies otherwise available in law or statute.

(c) For the purpose of this section, the term "person" means an individual or any nongovernmental group, association, corporation or any other nongovernmental entity.

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§19-19-7. Additional limitations on nuisance actions.

(a) The provisions of this section are in addition to the limitations on actions brought against an agricultural operation in §19-19-4 of this code, and shall also apply to any nuisance action brought against an agricultural operation in any court of this state.

(b) A person may not file a nuisance action to recover damages in which an agricultural operation is alleged to be a public or private nuisance unless:

(1) He or she is the majority legal land owner;

(2) He or she owns property adversely affected by agricultural operations within one half mile of the agricultural operation; and

(3) The agricultural operation has materially violated a federal, state, or local law applicable to agriculture.

(c) No agricultural operation within this state which has been in operation for a period of more than one year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural operation is located. In any nuisance action, public or private, against an agricultural operation or its principals or employees proof that the agricultural operation has existed for one year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.

(d) No state or local agency may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.

(e) No agricultural operation shall be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.

(f) No agricultural operation shall be considered a nuisance, private or public, if the agricultural operation makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits.

(1) For the purpose of this section, a reasonable expansion includes, but is not limited to:

(A) Transfer of the agricultural operation;

(B) Purchase of additional land for the agricultural operation;

(C) Introducing technology to an existing agricultural operation including, but not limited to,

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new activities, practices, equipment, and procedures consistent with technological development within the agricultural industry;

(D) Applying a Natural Resources Conservation Service program or other United States Department of Agriculture program to an existing or future agricultural operation; or

(E) Any other change that is related and applied to an existing agricultural operation, so long as the change does not affect the agricultural operation's compliance with applicable state and federal laws, regulations, and permits.

(2) The reasonable expansion exemption provided by this subsection cannot apply to an expansion that:

(A) Creates a substantially adverse effect upon the environment; or

(B) Creates a hazard to public health and safety.

(g) A requirement of a municipality does not apply to an agricultural operation situated outside of the municipality's corporate boundaries on the effective date of this chapter. If an agricultural operation is subsequently annexed or otherwise brought within the corporate boundaries of a municipality, the requirements of the municipality do not apply to the agricultural operation.

(h) An agricultural operation is not, nor shall it become, a private or public nuisance after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting the basis for the nuisance action exist substantially unchanged since the established date of operation. The established date of operation is the date on which an agricultural operation commenced.

(i) The provisions of this section shall not apply in any of the following circumstances:

(1) Whenever a nuisance results from the negligent operation of any such agricultural operation; or

(2) To affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of agricultural operation.

(j) The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of operations or by diminishing the size of the operation.

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§19-19-8. Damages.

(a) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of §19-19-7(h) of this code is liable to the agricultural operation for all costs and expenses incurred in defense of the action, including, but not limited to, attorneys' fees, court costs, travel, and other related incidental expenses incurred in the defense.

(b) In no event shall the total amount of damages in any successful nuisance action exceed the diminished value of the subject property.

(c) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation 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 the nuisance, not to exceed the fair market value of the claimant's property; and

(2) If the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the claimant's property caused by the nuisance.

(d) If any claimant or claimant's successor in interest brings a subsequent private nuisance action against any agricultural operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(e) A claimant shall not be awarded punitive damages for nuisance actions originating from an agricultural operation.

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