

WEST VIRGINIA LEGISLATURE

FILED

2019 MAR 27 P 3:33

2019 REGULAR SESSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SB 393

Enrolled
Committee Substitute
for
Senate Bill 393

SENATORS SYPOLT, AZINGER, BALDWIN, BLAIR, BOSO,
CLEMETS, HAMILTON, JEFFRIES, MAYNARD, HARDESTY,
RUCKER, SMITH, TAKUBO, TARR, PLYMALE, BEACH,
CLINE, ROBERTS, SWOPE, AND TRUMP, *original sponsors*

[Passed March 5, 2019; in effect 90 days from
passage]

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1 AN ACT to amend and reenact §19-19-2 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto two new sections, designated §19-19-7 and §19-19-
3 8, all relating to the right to farm; providing for amended definitions of “agriculture” and
4 “agricultural land”; defining the term “agricultural operation”; limiting persons who may file
5 a nuisance action against an agricultural operation; providing for protections to agricultural
6 operations from nuisance actions under certain circumstances; prohibiting state and local
7 agencies from bringing actions against agricultural operations for activities that are in
8 material compliance with applicable state and federal laws, regulations, and permits;
9 exempting agricultural operations from municipal requirements under certain
10 circumstances; providing that protections from nuisance actions do not apply under certain
11 circumstances; permitting that the protected status of an agricultural operation is
12 assignable, alienable, and inheritable; making a person who brings a nuisance action
13 against a protected agricultural operation liable for the costs and expenses of the
14 agricultural operation in defending the action; limiting total damages to the diminished
15 value of the subject property; providing for the exclusive compensatory damages that may
16 be awarded to a claimant where the alleged nuisance originates from an agricultural
17 operation; providing that the combined recovery of any claimant or claimant’s successor
18 in interest against an agricultural operation shall not exceed the fair market value of his or
19 her property; and prohibiting punitive damages being awarded to a claimant for nuisance
20 actions originating from an agricultural operation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-2. Definitions.

1 For the purposes of this article:
2 (a) “Agriculture” shall mean the production of food, fiber and woodland products, by means
3 of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or

4 poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture
5 products, packing, shipping, milling, and marketing of agricultural products conducted by the
6 proprietor of the agricultural operation, or any other legal plant or animal production and all farm
7 practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (A) Transfer of the agricultural operation;

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

32 (C) Introducing technology to an existing agricultural operation including, but not limited
33 to, new activities, practices, equipment, and procedures consistent with technological
34 development within the agricultural industry;

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

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

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

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

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

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

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

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

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

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

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

§19-19-8. Damages.

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

5 to, attorneys' fees, court costs, travel, and other related incidental expenses incurred in the
6 defense.

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

9 (c) The exclusive compensatory damages that may be awarded to a claimant where the
10 alleged nuisance originates from an agricultural operation shall be as follows:

11 (1) If the nuisance is determined to be a permanent nuisance, compensatory damages
12 shall be limited to the reduction in the fair market value of the claimant's property caused by the
13 nuisance, not to exceed the fair market value of the claimant's property; and

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

FILED

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OFFICE WEST VIRGINIA SECRETARY OF STATE

[Signature]
.....
Chairman, Senate Committee

[Signature]
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *27th*
March
Day of, 2019.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 11 2019

Time 1:41 pm