

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 667

BY SENATOR KARNES

[Introduced February 22, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §19-1-13, relating to the right to farm; and protecting agricultural operations
 3 from nuisance litigation if the facility has been in operation for more than one year.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 section, designated §19-1-13, to read as follows:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-13. Right to farm; protection from nuisance.

1 (a) No agricultural operation or any of its appurtenances shall be deemed to be a nuisance,
 2 private or public, by any changed conditions in the locality thereof after the facility has been in
 3 operation for more than one year, when the facility was not a nuisance at the time the operation
 4 began. As used in this section, the term "agricultural operation and its appurtenances" includes,
 5 but is not limited to, any facility used in the production or processing for commercial purposes of
 6 crops, livestock, swine, poultry, livestock products, swine products or poultry products.

7 (b) An agricultural operation protected pursuant to the provisions of this section may
 8 reasonably expand its operation in terms of acres or animal units without losing its protected
 9 status so long as all county, state, and federal environmental codes, laws, or regulations are met
 10 by the agricultural operation. Reasonable expansion shall not be deemed a public or private
 11 nuisance, provided the expansion does not create a substantially adverse effect upon the
 12 environment or creates a hazard to public health and safety, or creates a measurably significant
 13 difference in environmental pressures upon existing and surrounding neighbors because of
 14 increased pollution. Reasonable expansion shall not include complete relocation of a farming
 15 operation by the owner within or without the present boundaries of the farming operation;
 16 however, reasonable expansion of like kind that presently exists, may occur. If a poultry or
 17 livestock operation is to maintain its protected status following a reasonable expansion, the
 18 operation must ensure that its waste handling capabilities and facilities meet or exceed minimum

19 recommendations for storage, processing, or removal of animal waste.

20 (c) The protected status of an agricultural operation, once acquired, shall be assignable,
21 alienable, and inheritable. The protected status of an agricultural operation, once acquired, shall
22 not be waived by the temporary cessation of farming or by diminishing the size of the operation.
23 The provisions of this section shall not apply whenever a nuisance results from the negligent or
24 improper operation of any such agricultural operation or its appurtenances.

25 (d) The provisions of this section shall not affect or defeat the right of any person, firm or
26 corporation to recover damages for any injuries sustained by it as a result of the pollution or other
27 change in the quantity or quality of water used by that person, firm or corporation for private or
28 commercial purposes, or as a result of any overflow of land owned by or in the possession of any
29 such person, firm or corporation.

30 (e) The provisions of this section shall not apply to any nuisance resulting from an
31 agricultural operation located within the limits of any city, town or village.

32 (f) In any nuisance action brought in which an agricultural operation is alleged to be a
33 nuisance, and which is found to be frivolous by the court, the defendant shall recover the
34 aggregate amount of costs and expenses determined by the court to have been reasonably
35 incurred in his or her behalf in connection with the defense of such action, together with a
36 reasonable amount for attorney's fees.

NOTE: The purpose of this bill is to protect the right to farm and to protect farms from nuisance litigation.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.