

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2774

BY DELEGATES CADLE, COOPER, WESTFALL, J. JEFFRIES,

HARSHBARGER, PAYNTER, WORRELL, BIBBY, HARDY,

WILSON AND ATKINSON

[Introduced January 30, 2019; Referred
to the Committee on Agriculture and Natural
Resources then then Judiciary.]

1 A BILL to amend and reenact §19-19-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend the code by adding thereto two new sections, designated §19-19-7 and §19-19-8,
 3 all relating to the right to farm; providing for an amended definition of agriculture; providing
 4 for protections to agriculture operations from nuisance litigation if the facility has been in
 5 operation for more than one year; and providing a severability clause.

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" or "agricultural operation" shall mean the production of food, fiber and
 3 woodland products, by means of cultivation, tillage of the soil and by the conduct of animal,
 4 livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture,
 5 horticulture, or any other legal plant or animal production and all farm practices. Appurtenant
 6 activities include the storing, packing, shipping and marketing, but not including as well as any
 7 manufacturing, milling or processing of such products by other than the producer thereof.

8 (b) "Agricultural land" shall mean ~~not less than five acres of~~ land and the improvements
 9 thereupon, used or usable in the production of food, fiber or woodland products of an annual value
 10 of \$1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of
 11 this section.

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

1 (a) In addition to the limitations on actions brought against an agricultural operation in §19-
 2 19-4 of this code, this section shall also apply to any nuisance action brought against an
 3 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;

9 (3) He or she limits the claim for damages to the actual amount his or her property is
10 devalued; and

11 (4) The agricultural operation has committed a criminal act, and found guilty.

12 (c) No agricultural operation shall be considered to be a nuisance, private or public, by
13 any changed conditions in the locality thereof after the facility has been in operation for more than
14 one year, when the facility was not a nuisance at the time the operation began.

15 (d) No agriculture or forestry operation or any of its appurtenances shall be or become a
16 private or public nuisance if the operators are applying reasonably acceptable management
17 practices to comply with all applicable laws and regulations.

18 (e) No agriculture operation shall be considered a nuisance, private or public, if an
19 agricultural operation expands, in terms of acres or animal units, so long as all state and federal
20 environmental codes, laws, and regulations are met by the agricultural operation: *Provided, That*
21 the expansion does not:

22 (1) Create a substantially adverse effect upon the environment;

23 (2) Create a hazard to public health and safety;

24 (3) Create a measurably significant difference in environmental conditions that exceed
25 minimum recommendations of reasonably acceptable management practices for storing,
26 processing, removing or applying animal waste; or

27 (4) Fundamentally change operations, including, but not limited to, complete relocation of
28 an agricultural operation by the owner within or without the present boundaries of the farming
29 operation.

30 (f) For the purpose of this section, a reasonable expansion may include, but is not limited
31 to:

32 (1) Sale of the agricultural operation;

33 (2) Introducing technology to an existing agricultural operation;

34 (3) Applying a natural resources conservation practice or other United States Department
35 of Agriculture program to an existing agricultural operation; or

36 (4) Any other change that is related and applied to an existing agricultural operation.

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

42 (h) No nuisance action may be brought against an agricultural operation that has lawfully
43 been in operation for one year or more prior to the date on which the action is brought, if the
44 conditions or circumstances complained of as constituting the basis for the nuisance action have
45 existed substantially unchanged since the established date of operation.

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

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

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

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

56 (k) In any action brought in which an agricultural operation is alleged to be a public or
57 private nuisance, and that the court finds to be meritless, the agricultural operation may recover
58 the aggregate amount of costs and expenses determined by the court to have been reasonably

59 incurred in connection with the defense of such action, together with a reasonable amount for
60 attorney's fees.

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

§19-19-8. Severability.

1 The provisions of this article are severable and accordingly, if any part of this article is
2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
3 of the remaining provisions of this article.

NOTE: The purpose of this bill is to protect the right to farm and protect agricultural operations from nuisance litigation if the facility has been in operation for more than one year.

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