

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 393

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

[Originating in the Committee on the Judiciary;

Reported on February 12, 2019]

1 A BILL 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 a new section, designated §19-19-7, all relating to the
3 right to farm; providing for an amended definition of “agriculture”; providing for protections
4 to agriculture operations from nuisance litigation if the facility has been in operation for
5 more than one year; providing for the exclusive compensatory damages that may be
6 awarded to a claimant where the alleged nuisance originates from an agricultural
7 operation; and prohibiting punitive damages being awarded to a claimant for nuisance
8 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” or “agricultural operation” shall mean any facility for the production of food,
3 fiber, and woodland products, by means of cultivation, tillage of the soil, and by the conduct of
4 animal, livestock, dairy, apiary, equine, or poultry husbandry, and the practice of forestry,
5 silviculture, horticulture, ~~harvesting of silviculture products, packing, shipping, milling, and~~
6 marketing of agricultural products conducted by the proprietor of the agricultural operation, or any
7 other legal plant or animal production and all farm practices. ~~the packing, shipping and marketing,~~
8 ~~but not including any manufacturing, milling, or processing of such products by other than the~~
9 ~~producer thereof.~~

10 (b) “Agricultural land” shall mean ~~not less than five acres~~ any amount of land and the
11 improvements thereupon, used or usable in the production of food, fiber, or woodland products of
12 an annual value of \$1,000 or more, by the conduct of the business of agriculture, as defined in
13 subsection (a) of 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; and

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

11 (c) An agricultural operation within this state which has been in operation for a period of
12 more than one year shall not 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. If the operation is in compliance with all applicable state and federal
18 laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with
19 commonly accepted agricultural practice. A state or local law-enforcement agency may not bring
20 a criminal or civil action against an agricultural operation for an activity that is in compliance with
21 all applicable state and federal laws, regulations, and permits.

22 (d) So long as the agricultural operation meets the requirements of §19-19-7(c) of this
23 code, an agricultural operation shall not be or become a private or public nuisance if the operators
24 are conducting the agricultural operation in a manner consistent with commonly accepted
25 agricultural practice.

26 (e) So long as the agricultural operation meets the requirements of §19-19-7(c) of this
27 code, an agriculture operation shall not be considered a nuisance, private or public, if an
28 agricultural operation expands, in terms of acres or animal units, so long as the operation is in
29 compliance with all applicable state and federal laws, regulations, and permits: *Provided, That*
30 the expansion does not:

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

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

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

36 (4) Fundamentally change operations, including, but not limited to, complete relocation of
37 an agricultural operation by the owner within or without the present boundaries of the agricultural
38 operation.

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

40 (1) Sale of the agricultural operation;

41 (2) Introducing technology to an existing agricultural operation including, but not limited to,
42 new activities, practices, equipment, and procedures consistent with technological development
43 within the agricultural industry;

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

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

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

52 boundaries of a municipality, the requirements of the municipality do not apply to the agricultural
53 operation.

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

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

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

61 or

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

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

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

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

77 (m) So long as the agricultural operation meets the requirements of §19-19-7(c) of this
78 code, the exclusive compensatory damages that may be awarded to a claimant where the alleged
79 nuisance originates from an agricultural operation shall be as follows:

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

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

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

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