

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 339

BY SENATORS SYPOLT, SMITH, WOODRUM, AND RUCKER

[Introduced February 18, 2021; referred
to the Committee on Agriculture and Rural
Development; and then to the Committee on the
Judiciary]

1 A BILL to amend and reenact §19-19-2 and §19-19-7 of the Code of West Virginia, 1931, as
 2 amended, all relating to the right to farm; defining terms; expanding protection of
 3 agricultural operations from nuisance and other legal actions to agricultural and
 4 horticultural practices allowed within municipalities, aquaponics, and hydroponics;
 5 requiring compliance with local laws, regulations, and ordinances for protection from
 6 nuisance and other legal actions to apply; and making technical changes.

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~~ means the production of food, fiber, and woodland products,
 3 by means of cultivation; tillage of the soil; and by the conduct of animal, livestock, dairy, apiary,
 4 equine, or poultry husbandry; and the practice of forestry, silviculture, or horticulture; harvesting
 5 of silviculture products; storage, packing, shipping, ~~milling~~, and marketing of agricultural products;
 6 and the manufacturing, milling, or processing of products conducted by the proprietor of the
 7 agricultural operation; or any other legal plant or animal production and all farm practices.

8 (b) "Agricultural land" ~~shall mean~~ means any amount 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 11 this section.

12 (c) "Agricultural operation" ~~shall mean~~ means any facility utilized for agriculture, urban
 13 agriculture, aquaponics, or hydroponics.

14 (d) "Aquaponics" means the cultivation of fish and plants together in a constructed,
 15 recirculating ecosystem utilizing natural bacterial cycles to convert fish waste to plant nutrients.

16 (e) "Garden" means a planned space for the display, cultivation, and enjoyment of plants,
 17 including vegetables, flowers, and fruits, for private or personal use.

18 (f) "Hydroponics" means the cultivation of plants in nutrient solution rather than soil.

19 (g) "Urban agriculture" means agricultural, horticultural, and silvicultural practices that are
20 allowed by ordinance, code, permit, or license within the corporate boundaries of a municipality
21 including, but not limited to, agriculture, aquaponics, hydroponics, and the maintaining of a
22 garden.

§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, or
10 ordinance 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,~~ and
17 local laws, 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,~~ and
20 local laws, 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, and local laws, regulations, and permits, it shall be presumed to be conducted in a
25 manner 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, and local 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, and local 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 situated outside of a municipality's corporate boundaries is subsequently

47 annexed or otherwise brought within the municipality's corporate boundaries of a municipality, the
48 requirements of the municipality do not apply to the agricultural 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, regulation, ordinance, or governmental requirement
60 that applies to the agricultural operation or portion of agricultural operation.

61 (3) 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.

NOTE: The purpose of this bill is to expand the types of agricultural operations that are protected from nuisance and other legal actions to include agricultural and horticultural practices allowed within a municipality and to hydroponics and aquaponics. The bill also requires compliance with local laws for the legal protections to apply.

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