

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5533

By Delegate Young

[Introduced February 09, 2024; Referred to the
Committee on Agriculture and Natural Resources
then Government Organization]

1 A BILL to amend and reenact §19-19-1, of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §19-19-2 of said code; to amend and reenact §19-19-4 of said code; to
3 amend and reenact §19-19-7 of said code; and to amend and reenact §19-13-3 of said
4 code, all relating to clarifying the Right to Farm Act relating to residential agricultural
5 operations and the protection of agriculture.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-1. Purpose; public policy.

6 Whereas, Agricultural production of food and fiber is a basic necessity to sustain human
7 life, and essential to the general welfare and stability of this state and the citizens thereof, and the
8 continued conduct of the utilization of land in the conduct of agricultural production, including
9 woodland and forestry production, is a necessity to the welfare and common good of all of the
10 citizens of this state; and,

11 Whereas, The infringement upon residential agricultural lands, agricultural lands, and
12 agricultural operations by other uses and occupancies which are either adverse or incompatible
13 with the continued agricultural utilization may be of such nature as to endanger orderly agricultural
14 production, it is hereby declared to be the public policy of this state that agricultural production and
15 the utilization of land in agricultural productive operations be protected and preserved.

§19-19-2. Definitions.

16 For the purposes of this article:

17 (a) "Agriculture" shall mean the production of food, fiber and woodland products, by means
18 of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or
19 poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture
20 products, packing, shipping, milling, and marketing of agricultural products conducted by the
21 proprietor of the agricultural operation, or any other legal plant or animal production and all farm
22 practices.

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

26 (c) "Agricultural operation" shall mean any facility including agricultural residential land and
27 any appurtenances thereon utilized for agriculture.

28 (d) "Agricultural residential land" shall mean any amount of land zoned for residential
29 purposes, and the improvements or appurtenances thereon, used or usable for the purposes of
30 urban agriculture in the production of food for consumption by the owner or operator of the
31 residential agricultural land, or for the production and sale of non-potentially hazardous foods as
32 defined by §19-35-2 of this code, limited to cultivation and/or tillage of the soil and by the conduct
33 of apiary or poultry husbandry, and the practice of silviculture, horticulture, harvesting of
34 silviculture conducted by the proprietor of the agricultural residential land, and all farm practices

35 (e) "Urban agriculture" shall mean the keeping, maintaining, raising, and/or harboring of up
36 to six domesticated chicken hens or any apiary within any town, city, municipality, or political
37 subdivision for personal consumption or the production and sale of a non-potentially hazardous
38 food.

§19-19-4. Agriculture not adverse; limitation of actions.

39 The conduct of agriculture upon agricultural land or agricultural residential land shall not be
40 deemed adverse to other use or uses of adjoining or neighboring land, whether such other land be
41 used or occupied for residential, commercial, business or for governmental, or any uses other than
42 agricultural.

43 No complaint or right of action shall be maintained in any court of this state against the
44 owner or operator of agricultural lands or agricultural residential land adverse to the conduct of
45 agriculture upon agricultural lands or agricultural residential land, unless:

46 (1) The complainant's use and occupancy of land of the complainant has existed upon his
47 or her adjoining or neighboring land before the agricultural operation complained of upon the

48 agricultural land or agricultural residential land; and

49 (2) The conduct of such agricultural operation complained of has by clear and convincing
50 evidence caused or will cause actual physical damage to the person or property of the owner or
51 occupant of such adjoining or neighboring lands.

§19-19-7. Additional limitations on nuisance legal 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 the
16 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~~ city, municipality, town, or political subdivision may bring a
19 criminal or civil action against an agricultural operation for an activity that is in material compliance
20 with all applicable state and federal 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 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 to,
33 new activities, practices, equipment, and procedures consistent with technological development
34 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 it
50 has been in operation for more than one year, if such operation was not a nuisance at the time the
51 operation began, and the conditions or circumstances complained of as constituting the basis for
52 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.

64 (k) No town, city, municipality, or political subdivision may prohibit urban agriculture or
65 agricultural residential land or cause a permit or license to be issued or obtained to engage in the
66 practice of urban agriculture.

ARTICLE 13. INSPECTION AND PROTECTION OF AGRICULTURE.

**§19-13-3. Commissioner's powers and duties; rule-making authority; apiary education;
cooperation with governmental agencies; seizure of infected bees and bee
equipment.**

1 (a) The commissioner may propose rules for legislative approval in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code: (1) To effectively eradicate, suppress
3 or control honey bee pests as far as may be practical; (2) to regulate the keeping and maintaining

4 of bees, bee equipment, queen breeding equipment, apiaries and appliances; (3) to regulate
5 treatments, retreatments, and fees for the services; and (4) any other rules necessary to effectuate
6 the enforcement of this article.

7 (b) The commissioner is authorized to conduct apiary education in a manner which
8 advances and promotes bee culture in West Virginia.

9 (c) The commissioner is authorized to cooperate with the federal government and its
10 agencies, departments and instrumentalities; other West Virginia agencies, departments,
11 divisions, or political subdivisions; and any other state or commonwealth and its agencies,
12 departments or political subdivisions, in order to carry out the effective administration of this
13 article.

14 (d) The commissioner is authorized to stop the delivery of, to seize, to destroy, to treat or to
15 order returned to point of origin, at the owner's expense, all appliances, bees, bee equipment, bee
16 products or hives transported into or within this state, found to be infected with honeybee pests
17 regardless of whether a valid certificate of inspection is attached.

18 (e) The authority to prohibit, regulate, inspect, and permit managed bees and apiaries and
19 to adopt rules on the placement and location of apiaries shall be preempted to the Commissioner
20 and supersedes any related ordinance, charter, regulation, or law adopted by any county,
21 municipalities, or political subdivision.

22 Any person who challenges the validity of any ordinance, charter, regulation, or law of any
23 county, municipal, or political subdivision in a court of law pursuant to subsection e, shall be
24 awarded his or her costs, attorney fees, and any other compensatory damages as provided by law.
25 This provision shall be retroactive.

NOTE: The purpose of this bill is to clarify the Right to Farm Act and the intent of the legislature to promote agriculture through agricultural businesses, promote the health of West Virginians and the West Virginia economy, and promote the protection of West Virginia agriculture.

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