

2023 South Dakota Legislature

House Bill 1090**AMENDMENT 1090D
FOR THE HOUSE AGRICULTURE AND NATURAL RESOURCES
ENGROSSED BILL**

1 **An Act to modify protections for agricultural operations from nuisance claims.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 21-10-25 be AMENDED:**

4 **21-10-25.** If an action pursuant to § 21-10-1 is brought against ~~a farm~~ an
5 agricultural operation existing continuously, ~~prior to such the action,~~ and which is located
6 within one mile of the boundaries of the land use or occupancy of the plaintiff, ~~and if the~~
7 court finds there was no reasonable ground or cause for ~~said the action,~~ the costs may be
8 assessed to ~~such the~~ plaintiff.

9 **Section 2. That § 21-10-25.2 be AMENDED:**

10 **21-10-25.2.** No agricultural operation or any of its appurtenances may be deemed
11 to be a nuisance, private or public, by any changed conditions in the locality of the
12 operation or its appurtenances, ~~after the facility has been in operation~~ operation has been
13 in existence for more than one year, if the ~~facility operation~~ operation was not a nuisance at the
14 time the operation began.

15 Any agricultural operation protected pursuant to ~~the provisions of~~ this section may
16 reasonably expand its operation ~~in terms of acres or animal units,~~ without losing its
17 protected status, if all county, municipal, state, and federal environmental codes, laws, ~~or~~
18 and regulations are met by the agricultural operation.

19 The protected status of an agricultural operation, once acquired, is assignable,
20 alienable, and inheritable. The protected status of an agricultural operation, once acquired,
21 may not be waived by the temporary cessation of farming ~~or,~~ by diminishing the size of
22 the operation, or by a change in the type of feeding operation or crop produced. ~~The~~
23 ~~provisions of this~~

24 This section ~~do does~~ not apply if a nuisance results from the negligent or improper
25 operation of ~~any such an~~ agricultural operation or its appurtenances.

1 **Section 3. That § 21-10-25.3 be AMENDED:**

2 **21-10-25.3.** As used in ~~§§ 21-10-25.1 to 21-10-25.6, inclusive~~this chapter, the
3 term ~~"agricultural operation and its appurtenances"~~, includes any facility or appurtenance
4 used in the production or commercial processing for commercial purposes of crops, timber,
5 livestock, swine, poultry, livestock products, swine products, or poultry products, or in
6 any agrotourism activity as defined in § 20-9-12.

7 **Section 4. That chapter 21-10 be amended with a NEW SECTION:**

8 The compensatory damages that may be awarded to a plaintiff for a private
9 nuisance action, in which the alleged nuisance resulted from an agricultural operation are
10 as follows:

- 11 (1) If the nuisance is a permanent nuisance, compensatory damages are measured by
12 the reduction in the fair market value of the plaintiff's property caused by the
13 nuisance, but not exceeding the fair market value of the property; and
14 (2) If the nuisance is a temporary nuisance, compensatory damages are limited to the
15 reduction in the fair rental value of the plaintiff's property caused by the nuisance.

16 **Section 5. That chapter 21-10 be amended with a NEW SECTION:**

17 Any punitive damages claim in a private nuisance action brought against an
18 agricultural operation is determined pursuant to § 21-3-2. Additionally, a plaintiff may not
19 recover punitive damages in a nuisance action against an agricultural operation unless:

- 20 (1) The alleged nuisance is based on substantially the same conduct that was subject
21 to a civil enforcement judgment or criminal conviction taken by any county,
22 municipal, state, or federal environmental regulatory agency pursuant to a notice
23 of violation for the conduct alleged to be the source of the nuisance; and
24 (2) The conviction or judgment occurred within three years of the first action forming
25 the basis of the nuisance action.

26 **Section 6. That chapter 21-10 be amended with a NEW SECTION:**

27 Sections 4 and 5 of this Act do not:

- 28 (1) Apply to any cause of action brought against an agricultural operation for
29 negligence, trespass, personal injury, strict liability, or other cause of action for
30 tort liability, other than nuisance; and
31 (2) Prohibit or limit any request for injunctive relief that is otherwise available.

1 **Section 7. That chapter 21-10 be amended with a NEW SECTION:**

2 A nuisance action may not be filed against an agricultural operation unless the
3 plaintiff is ~~a legal possessor~~ ~~an owner~~ ~~or lessee~~ of the real property affected by the
4 conditions alleged to be a nuisance, and the real property is located within one mile of the
5 source of the activity or structure alleged to be a nuisance.

6 An agricultural operation may not be held liable for nuisance unless the plaintiff
7 proves by clear and convincing evidence that the claim arises out of conduct that did not
8 comply with any county, municipal, state, or federal ~~environmental~~ law or regulation.

9 **Section 8.**

10 The Code Commission, in future supplements and revisions of South Dakota
11 Codified Laws, shall renumber § 21-10-25.3 to § 21-10-25, § 21-10-25 to § 21-10-25.1,
12 § 21-10-25.1 to § 21-10-25.2, and § 21-10-25.2 to § 21-10-25.3.

13 The Code Commission is authorized and directed, pursuant to § 2-16-9, to correct
14 and integrate all provisions and associated cross references that have been renumbered
15 pursuant to this section.