2023 South Dakota Legislature

House Bill 1090

ENROLLED

AN ACT

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

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

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

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

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

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

Any agricultural operation protected pursuant to this section may reasonably expand its operation, without losing its protected status, if all county, municipal, state, and federal environmental codes, laws, and regulations are met by the agricultural operation.

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

This section does not apply if a nuisance results from the negligent or improper operation of an agricultural operation or its appurtenances.

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

21-10-25.3. As used in this chapter, the term, agricultural operation, includes any facility or appurtenance used in the production or commercial processing of crops, timber, livestock, swine, poultry, livestock products, swine products, or poultry products, or in any agrotourism activity as defined in § 20-9-12.

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

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

(1) If the nuisance is a permanent nuisance, compensatory damages are measured by the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not exceeding the fair market value of the property; and

(2) If the nuisance is a temporary nuisance, compensatory damages are limited to the reduction in the fair rental value of the plaintiff's property caused by the nuisance.

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

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

(1) The alleged nuisance is based on substantially the same conduct that was subject to a civil enforcement judgment or criminal conviction taken by any county, municipal, state, or federal environmental regulatory agency pursuant to a notice of violation for the conduct alleged to be the source of the nuisance; and

(2) The conviction or judgment occurred within three years of the first action forming the basis of the nuisance action.

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

Sections 4 and 5 of this Act do not:

(1) Apply to any cause of action brought against an agricultural operation for negligence, trespass, personal injury, strict liability, or other cause of action for tort liability, other than nuisance; and

(2) Prohibit or limit any request for injunctive relief that is otherwise available.

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

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

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

Section 8.

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

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

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

I certify that the attached Act originated in the:

House as Bill No. 1090

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1090
File No. _____
Chapter No. _____

Received at this Executive Office
this _____ day of _____,

2023 at _____M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 2023

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 2023
at _____ o'clock __M.

_____
Secretary of State

By _____
Asst. Secretary of State