

CHAPTER 66

AGRICULTURE

SENATE BILL 00-029

BY SENATORS Hillman, Chlouber, Congrove, Dennis, Epps, Evans, Hernandez, Lamborn, Musgrave, Owen, Powers, Teck, and Wattenberg;

also REPRESENTATIVES Young, Alexander, Clapp, Coleman, Dean, Fairbank, Gagliardi, Gotlieb, Hefley, Hoppe, Johnson, Kaufman, Kester, Larson, Lee, McElhany, McKay, Miller, Mitchell, Paschall, Pfiffner, Spence, Spradley, Stengel, Swenson, Taylor, Tochtrop, Webster, and T. Williams.

AN ACT

CONCERNING THE LIMITATION OF ACTIONS FOR NUISANCE AGAINST AGRICULTURAL OPERATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 35-3.5-102, Colorado Revised Statutes, is amended to read:

35-3.5-102. Agricultural operation deemed not nuisance - state agricultural commission - attorney fees - exceptions. (1) (a) ~~An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year if such operation was not a nuisance at the time the operation began; except that the provisions of this subsection (1) shall not apply in the case of a negligent operation or when a change in operation would result in a private or public nuisance or when a substantial increase in the size of operations occurs.~~ EXCEPT AS PROVIDED IN THIS SECTION, AN AGRICULTURAL OPERATION SHALL NOT BE FOUND TO BE A PUBLIC OR PRIVATE NUISANCE IF THE AGRICULTURAL OPERATION ALLEGED TO BE A NUISANCE EMPLOYS METHODS OR PRACTICES THAT ARE COMMONLY OR REASONABLY ASSOCIATED WITH AGRICULTURAL PRODUCTION.

(b) AN AGRICULTURAL OPERATION THAT EMPLOYS METHODS OR PRACTICES THAT ARE COMMONLY OR REASONABLY ASSOCIATED WITH AGRICULTURAL PRODUCTION SHALL NOT BE FOUND TO BE A PUBLIC OR PRIVATE NUISANCE AS A RESULT OF ANY OF THE FOLLOWING ACTIVITIES OR CONDITIONS:

(I) CHANGE IN OWNERSHIP;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

- (II) NONPERMANENT CESSATION OR INTERRUPTION OF FARMING;
- (III) PARTICIPATION IN ANY GOVERNMENT SPONSORED AGRICULTURAL PROGRAM;
- (IV) EMPLOYMENT OF NEW TECHNOLOGY; OR
- (V) CHANGE IN THE TYPE OF AGRICULTURAL PRODUCT PRODUCED.

(2) (a) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, AN AGRICULTURAL OPERATION SHALL NOT BE FOUND TO BE A PUBLIC OR PRIVATE NUISANCE IF SUCH AGRICULTURAL OPERATION:

(I) WAS ESTABLISHED PRIOR TO THE COMMENCEMENT OF THE USE OF THE AREA SURROUNDING SUCH AGRICULTURAL OPERATION FOR NONAGRICULTURAL ACTIVITIES;

(II) EMPLOYS METHODS OR PRACTICES THAT ARE COMMONLY OR REASONABLY ASSOCIATED WITH AGRICULTURAL PRODUCTION; AND

(III) IS NOT OPERATING NEGLIGENTLY.

(b) EMPLOYMENT OF METHODS OR PRACTICES THAT ARE COMMONLY OR REASONABLY ASSOCIATED WITH AGRICULTURAL PRODUCTION SHALL CREATE A REBUTTABLE PRESUMPTION THAT AN AGRICULTURAL OPERATION IS NOT OPERATING NEGLIGENTLY.

~~(b)~~ (3) The court may, pursuant to sections 13-16-122 and 13-17-102, C.R.S., award expert fees, reasonable court costs, and reasonable attorney fees to the prevailing party in any action brought to assert that an agricultural operation is a private or public nuisance. Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening in any way the provisions of sections 25-7-138 (5), C.R.S., and 25-8-501.1 (8), C.R.S.

~~(2)~~ (4) As used in this article, "agricultural operation" has the same meaning as "agriculture", as defined in section 35-1-102 (1).

~~(3)~~ (5) Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this section is void; except that the provisions of this subsection ~~(3)~~ (5) shall not apply when an agricultural operation is located within the corporate limits of any city or town on July 1, 1981, or is located on a property ~~which~~ THAT the landowner voluntarily annexes to a municipality on or after July 1, 1981.

~~(4)~~ (6) This section shall not invalidate any contracts made prior to ~~July 1, 1981~~ SEPTEMBER 1, 2000, but shall be applicable only to contracts and agreements made on or after ~~July 1, 1981~~ SEPTEMBER 1, 2000.

~~(5)~~ (7) ~~Nothing in this article shall be construed to prohibit a local government from adopting an ordinance or passing a resolution~~ A LOCAL GOVERNMENT MAY ADOPT AN ORDINANCE OR PASS A RESOLUTION that provides additional protection for agricultural operations; except that no such ordinance or resolution shall prevent an

owner from selling his or her land or prevent or hinder the owner in seeking approval to put the land into alternative use.

SECTION 2. Effective date - applicability. (1) This act shall take effect September 1, 2000, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to all actions commenced on or after the applicable effective date of this act.

Approved: March 29, 2000