

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 147

An Act to amend and reenact § 3.2-302 of the Code of Virginia, relating to agricultural operations; nuisance.

[H 987]

Approved March 2, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-302 of the Code of Virginia is amended and reenacted as follows:

§ 3.2-302. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in ~~accordance~~ *substantial compliance* with ~~existing~~ *any applicable best management practices in use by the operation at the time of the alleged nuisance and* ~~comply~~ *with existing* any applicable laws and regulations of the Commonwealth *relevant to the alleged nuisance. No action shall be brought by any person against any agricultural operation the existence of which was known or reasonably knowable when that person's use or occupancy of his property began.*

The provisions of this section shall apply to any nuisance claim brought against any party that has a business relationship with the agricultural operation that is the subject of the alleged nuisance. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances to any action for negligence or any tort other than a nuisance.

For the purposes of this subsection, "substantial compliance" means a level of compliance with applicable best management practices, laws, or regulations such that any identified deficiency did not cause a nuisance that created a significant risk to human health or safety. Agricultural operations shall be presumed to be in substantial compliance absent a contrary showing.

B. The provisions of subsection A shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person.

C. *Only persons with an ownership interest in the property allegedly affected by the nuisance may bring an action for private nuisance. Any compensatory damages awarded to any person for a private nuisance action not otherwise prohibited by this section, where the alleged nuisance emanated from an agricultural operation, shall be measured as follows:*

1. For a permanent nuisance, by the reduction in fair market value of the person's property caused by the nuisance, but not to exceed the fair market value of the property; or

2. For a temporary nuisance, by the diminution of the fair rental value of the person's property.

The combined recovery from multiple actions for private nuisance brought against any agricultural operation by any person or that person's successor in interest shall not exceed the fair market value of the subject property, regardless of whether any subsequent action is brought against a different defendant than any preceding action.

D. *Notwithstanding subsection C, for any nuisance claim not otherwise prohibited by this section, nothing herein shall limit any recovery allowed under common law for physical or mental injuries that arise from such alleged nuisance and are shown by objective and documented medical evidence to have endangered life or health.*

E. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void. ~~The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances.~~