



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

States' Right-To-Farm Statutes

State of Colorado

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States' Right-to-Farm Statutes

STATE OF COLORADO

Colo. Rev. Stat. §§ 35-3.5-101 to 35-3.5-103

Current through the Second Regular Session of the 70th General Assembly (2016).

§ 35-3.5-101. Legislative declaration

It is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly recognizes that, when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, a number of agricultural operations are forced to cease operations, and many others are discouraged from making investments in farm improvements. It is the purpose of this article to reduce the loss to the state of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is further recognized that units of local government may adopt ordinances or pass resolutions that provide additional protection for agricultural operations consistent with the interests of the affected agricultural community, without diminishing the rights of any real property interests.

§ 35-3.5-102. Agricultural operation deemed not nuisance--state agricultural commission--attorney fees--exceptions

(1)(a) 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;
- (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.

(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 section 25-7-138(5), C.R.S., and 25-8-501.1(8), C.R.S.

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

(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 (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 that the landowner voluntarily annexes to a municipality on or after July 1, 1981.

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

(7) 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.

§ 35-3.5-103. Severability

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.