



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **States' Right-To-Farm Statutes**

**State of South Dakota**

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## States' Right-to-Farm Statutes

### STATE OF SOUTH DAKOTA

S.D. Codified Laws §§ 21-10-21.5 to 21-10-21.6

*Current through 2016 Session Laws and Supreme Court Rule 16-67*

#### **21-10-25.1. State policy to protect agricultural operations from nuisance suits**

It is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The Legislature finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of §§ 21-10-25.1 to 21-10-25.6, inclusive, to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

#### **21-10-25.2. Certain agricultural operations protected--Poultry or livestock operations--Protected status transferable**

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 facility has been in operation for more than one year, if the facility was not a nuisance at the time the operation began. Any agricultural operation protected pursuant to the provisions of this section may reasonably expand its operation in terms of acres or animal units without losing its protected status if all county, municipal, state, and federal environmental codes, laws, or 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 or by diminishing the size of the operation. The provisions of this section do not apply if a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

#### **21-10-25.3. Agricultural operation defined**

As used in §§ 21-10-25.1 to 21-10-25.6, inclusive, the term "agricultural operation and its appurtenances" includes any facility used in the production or processing for commercial purposes of crops, timber, livestock, swine, poultry, livestock products, swine products, or poultry products.

#### **21-10-25.4. Damages due to water pollution or land overflow not affected by protected**

## **status**

The provisions of §§ 21-10-25.1 and 21-10-25.2 do not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries sustained by it as a result of the pollution or other change in the quantity or quality of water used by that person, firm, or corporation for private or commercial purposes, or as a result of any overflow of land owned by or in the possession of any such person, firm, or corporation.

### **21-10-25.5. Agricultural operation within municipality not protected**

The provisions of §§ 21-10-25.1 and 21-10-25.2 do not apply to any nuisance resulting from an agricultural operation located within the limits of any incorporated municipality on January 1, 1991.

### **21-10-25.6. Frivolous action against agricultural operation--Costs and expenses recoverable**

In any nuisance action brought in which an agricultural operation is alleged to be a nuisance, and which is found to be frivolous by the court, the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in his behalf in connection with the defense of such action, together with a reasonable amount for attorney's fees.