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States' Right-To-Farm Statutes:

South Dakota



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S.D. Codified Laws §§ 21-10-25.1 to 21-10-25.6

Current through the 2022 General Session of the 97th South Dakota Legislative Assembly as of February 25th, 2022

21-10-25.1. State policy as to agricultural land – Legislative intent as to limiting circumstances under which agricultural operations deemed nuisance

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. Protection from suit for nuisance for facilities operating for more than one year – Continuity and nature of protection – Applicability

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 and its appurtenances” 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. Rights to recover damages for pollution or change in water quantity or quality not affected

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. Applicability of provisions to certain preexisting operations

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. Damages for frivolous suits

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.

