

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0610.01 Jery Payne x2157

HOUSE BILL 22-1141

HOUSE SPONSORSHIP

Holtorf,

SENATE SPONSORSHIP

Sonnenberg,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING NUISANCE ACTIONS FILED AGAINST AGRICULTURAL
102 OPERATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires that, to file a nuisance suit against an agricultural operation, a plaintiff must occupy land that is within 2,640 feet of the operation. Punitive damages are not allowed unless the agricultural operation has violated certain environmental laws against pollution, the nuisance arises from the violation, and the action is brought within one year after the operation is held to have committed the violation.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Under current law, the prevailing party may be awarded court costs and attorney fees in a nuisance action against an agricultural operation. The bill changes this to award court costs and attorney fees only to a prevailing agricultural operation.

The bill also requires the state of Colorado, a county, a municipality, or a city and county to pay the owner or operator of an agricultural operation reasonable compensation, as determined by a court, for the loss of agricultural use if:

- The government brings a nuisance action against the agricultural operation that results in the court enjoining the agricultural operation from continuing agricultural production on the land; and
- The agricultural operation has been using the land for agricultural production for 10 years or longer.

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

2 **SECTION 1.** In Colorado Revised Statutes, 35-3.5-102, **amend**
3 (3); and **add** (1)(c) and (1)(d) as follows:

4 **35-3.5-102. Agricultural operation deemed not nuisance - state**
5 **agricultural commission - attorney fees - exceptions - definition.**

6 (1) (c) TO FILE A PRIVATE NUISANCE ACTION AGAINST AN AGRICULTURAL
7 OPERATION, THE PERSON FILING THE NUISANCE ACTION MUST OCCUPY
8 PROPERTY THAT IS NO MORE THAN TWO THOUSAND SIX HUNDRED FORTY
9 FEET FROM THE ACTIVITY OR STRUCTURE ALLEGED TO BE A NUISANCE.

10 (d) TO RECOVER PUNITIVE DAMAGES IN A PUBLIC OR PRIVATE
11 NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION:

12 (I) THE AGRICULTURAL OPERATION MUST HAVE BEEN CONVICTED
13 OF OR HELD CIVILLY LIABLE FOR A VIOLATION OF ARTICLE 6.5, 7, 8, 10, 12,
14 15, 16.5, OR 18.5 OF TITLE 25 OR A RULE PROMULGATED UNDER ANY OF
15 THESE ARTICLES;

16 (II) THE ALLEGED NUISANCE MUST ARISE FROM THE ACTIVITY
17 THAT WAS IN VIOLATION OF AN ARTICLE LISTED IN SUBSECTION (1)(d)(I)

1 OF THIS SECTION OR A RULE PROMULGATED UNDER ANY OF THE ARTICLES
2 LISTED; AND

3 (III) THE NUISANCE ACTION MUST BE BROUGHT WITHIN ONE YEAR
4 AFTER THE AGRICULTURAL OPERATION IS HELD CIVILLY LIABLE FOR OR
5 CONVICTED OF THE VIOLATION OF AN ARTICLE LISTED IN SUBSECTION
6 (1)(d)(I) OF THIS SECTION OR A RULE PROMULGATED UNDER ANY OF THE
7 ARTICLES LISTED.

8 (3) (a) IF AN AGRICULTURAL OPERATION PREVAILS IN A PUBLIC OR
9 PRIVATE NUISANCE ACTION FILED AGAINST IT, the court may, pursuant to
10 sections 13-16-122 and 13-17-102, ~~Č.R.S.~~, award expert fees, reasonable
11 court costs, and reasonable attorney fees to the prevailing party
12 AGRICULTURAL OPERATION. ~~in any action brought to assert that an~~
13 ~~agricultural operation is a private or public nuisance. Nothing in this~~
14 ~~section shall be construed as restricting, superseding, abrogating, or~~
15 ~~contravening in any way the provisions of~~ A COURT SHALL NOT HOLD
16 THAT THIS SECTION RESTRICTS, SUPERSEDES, ABROGATES, OR
17 CONTRAVENES sections 25-7-138 (5) ~~Č.R.S.~~, and 25-8-501.1 (8). ~~Č.R.S.~~

18 (b) THE STATE OF COLORADO, A COUNTY, A MUNICIPALITY, OR A
19 CITY AND COUNTY SHALL PAY THE OWNER OR OPERATOR OF AN
20 AGRICULTURAL OPERATION REASONABLE COMPENSATION, AS DETERMINED
21 BY THE COURT, FOR THE LOSS OF AGRICULTURAL USE IF:

22 (I) THE STATE OF COLORADO, COUNTY, MUNICIPALITY, OR CITY
23 AND COUNTY BRINGS A PUBLIC NUISANCE ACTION AGAINST THE
24 AGRICULTURAL OPERATION THAT RESULTS IN THE COURT ENJOINING THE
25 AGRICULTURAL OPERATION FROM CONTINUING AGRICULTURAL
26 PRODUCTION ON THE LAND; AND

27 (II) THE LAND HAS BEEN USED FOR AGRICULTURAL PRODUCTION

1 FOR TEN YEARS OR LONGER.

2 **SECTION 2. Act subject to petition - effective date -**
3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
4 the expiration of the ninety-day period after final adjournment of the
5 general assembly; except that, if a referendum petition is filed pursuant
6 to section 1 (3) of article V of the state constitution against this act or an
7 item, section, or part of this act within such period, then the act, item,
8 section, or part will not take effect unless approved by the people at the
9 general election to be held in November 2022 and, in such case, will take
10 effect on the date of the official declaration of the vote thereon by the
11 governor.

12 (2) This act applies to actions filed on or after the applicable
13 effective date of this act.