

HOUSE BILL 564

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Bob Wooley

AN ACT

RELATING TO PROPERTY; AMENDING SECTIONS OF THE RIGHT TO FARM
ACT TO PROTECT AGRICULTURAL OPERATIONS OR FACILITIES FROM
NUISANCE CLAIMS; PROVIDING GUIDANCE FOR COMPENSATORY DAMAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 47-9-3 NMSA 1978 (being Laws 1981,
Chapter 287, Section 3, as amended) is amended to read:

"47-9-3. AGRICULTURAL OPERATIONS DEEMED NOT A NUISANCE.--

A. Any agricultural operation or agricultural
facility is not, nor shall it become, a private or public
nuisance by any changed condition in or about the locality of
the agricultural operation or agricultural facility if the
operation was not a nuisance at the time the operation began
and has been in existence for more than one year; except that
the provisions of this section shall not apply whenever an

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1 agricultural operation or agricultural facility is operated
2 negligently or illegally such that the operation or facility is
3 a nuisance.

4 B. Any ordinance or resolution of any unit of local
5 government that makes the operation of any agricultural
6 operation or agricultural facility a nuisance or provides for
7 abatement of it as a nuisance under the circumstances set forth
8 in this section shall not apply when an agricultural operation
9 ~~[is located within the corporate limits of any municipality as~~
10 ~~of April 8, 1981]~~ was established prior to the date of adoption
11 of any such ordinance or resolution.

12 C. The established date of operation is the date on
13 which an agricultural operation commenced or an agricultural
14 facility was originally constructed. If an agricultural
15 operation or agricultural facility is subsequently expanded or
16 a new technology is adopted, the established date of operation
17 does not change."

18 SECTION 2. Section 47-9-6 NMSA 1978 (being Laws 1991,
19 Chapter 129, Section 4) is amended to read:

20 "47-9-6. DAMAGES.--~~[The provisions of the Right to Farm~~
21 ~~Act do not affect or defeat the right of a person to recover~~
22 ~~damages from injuries or damages sustained by him because of~~
23 ~~the pollution of, or change in the condition of, waters of a~~
24 ~~stream or because of an overflow on his lands.]~~

25 A. The exclusive compensatory damages that may be

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1 awarded to a plaintiff for an alleged nuisance shall be:

2 (1) if the nuisance is determined to be a
3 permanent nuisance, limited to the reduction in the fair market
4 value of the plaintiff's property caused by such nuisance, not
5 to exceed the fair market value of such plaintiff's property;

6 and

7 (2) if the nuisance is determined to be a
8 temporary nuisance, compensatory damages, limited to the lesser
9 of:

10 (a) the diminution in fair rental value
11 of the plaintiff's property caused by such nuisance; or

12 (b) the reasonable cost to repair or
13 mitigate any injury to the plaintiff caused by such nuisance.

14 B. If a plaintiff or plaintiff's successor in
15 interest brings a subsequent nuisance claim against the same
16 defendant, that defendant's successors in interest or any other
17 individual or entity for an alleged nuisance related to the
18 same or a substantially similar agricultural operation or
19 agricultural facility, such plaintiff and plaintiff's
20 successors in interest shall be limited to the compensatory
21 damages for a permanent nuisance as provided in this section.

22 Damages paid to the plaintiff or plaintiff's successors in
23 interest from any previous court order, judgment or settlement
24 based upon the same or a substantially similar agricultural
25 operation or agricultural facility, whether caused by the

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1 defendant, the defendant's successors in interest or any other
2 party, shall be considered in any subsequent case for the
3 purposes of determining that the total amount of damages
4 awarded shall not exceed the fair market value of the
5 plaintiff's property.

6 C. If a defendant in a private nuisance case where
7 the nuisance is alleged to originate from an agricultural
8 operation or agricultural facility demonstrates a good-faith
9 effort to abate a condition that is determined to constitute a
10 nuisance and such good-faith effort is unsuccessful, the
11 nuisance shall be deemed to be not capable of abatement and
12 compensatory damages shall be limited as provided in Paragraph
13 (1) of Subsection A of this section. Substantial compliance
14 with a court order regarding such agricultural operation or
15 agricultural facility shall constitute a good-faith effort as a
16 matter of law.

17 D. No person shall have standing to bring an action
18 for a private nuisance regarding an agricultural operation or
19 agricultural facility unless the person has an ownership
20 interest in the property alleged to be affected by the
21 nuisance.

22 E. If any provision of this section or the
23 application thereof to any person or circumstances is held
24 invalid, such invalidity shall not affect other provisions or
25 applications of this section that can be given effect without

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1 the invalid provision or application, and to this end, the
2 provisions of this section are declared to be severable."

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