

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 662

Introduced by Ballard, 21; DeKay, 40; Erdman, 47; Hansen, B., 16; Hardin,
48; Jacobson, 42.

Read first time January 18, 2023

Committee: Agriculture

1 A BILL FOR AN ACT relating to the Nebraska Right to Farm Act; to amend
2 sections 2-4402 and 2-4403, Reissue Revised Statutes of Nebraska; to
3 define a term; to change provisions relating to any action relating
4 to certain public or private nuisances as prescribed; to change a
5 statute of limitations; and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-4402, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 2-4402 As used in the Nebraska Right to Farm Act, unless the context
4 otherwise requires:

5 (1) Agricultural operation means a farm, farm operation, public
6 grain warehouse, or public grain warehouse operation;

7 (2) ~~(1)~~ Farm or farm operation means any tract of land over ten
8 acres in area used for or devoted to the commercial production of farm
9 products;

10 (3) ~~(2)~~ Farm product means those plants and animals useful to man
11 and includes, but is not limited to, forages and sod crops, grains and
12 feed crops, dairy and dairy products, poultry and poultry products,
13 livestock, including breeding and grazing, fruits, vegetables, flowers,
14 seeds, grasses, trees, fish, apiaries, equine and other similar products,
15 or any other product which incorporates the use of food, feed, fiber, or
16 fur; and

17 (4) ~~(3)~~ Public grain warehouse or public grain warehouse operation
18 means any grain elevator building or receptacle in which grain is held
19 for longer than ten days and includes, but is not limited to, all
20 buildings, elevators, and warehouses consisting of one or more warehouse
21 sections within the confines of a city, township, county, or state that
22 are considered a single delivery point with the capability to receive,
23 load out, weigh, and store grain.

24 Sec. 2. Section 2-4403, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 2-4403 (1) No person shall be permitted to file a nuisance action to
27 recover damages in which an agricultural operation is alleged to be a
28 public or private nuisance unless:

29 (a) Such person owns a majority interest in the real property
30 affected by the agricultural operation and such real property is located
31 within one-half mile of the agricultural operation; and

1 (b) The agricultural operation has materially violated a federal,
2 state, or local law applicable to an agricultural operation.

3 (2) An agricultural operation ~~(1) A farm or farm operation or a~~
4 ~~public grain warehouse or public grain warehouse operation~~ shall not be
5 found to be a public or private nuisance;

6 (a) If ~~if~~ the agricultural farm or farm operation or public grain
7 ~~warehouse or public grain warehouse~~ operation existed before a change in
8 the land use or occupancy of land in and about the locality of such
9 agricultural farm or farm operation or public grain warehouse or public
10 ~~grain warehouse~~ operation and before such change in land use or occupancy
11 of land the agricultural farm or farm operation or public grain warehouse
12 ~~or public grain warehouse~~ operation would not have been a nuisance; -

13 (b) If the agricultural operation is being conducted in a manner
14 consistent with commonly accepted agricultural practices. For purposes of
15 this subdivision, if the agricultural operation is in material compliance
16 with all applicable federal, state, and local laws, regulations, and
17 permits, it shall be presumed to be conducted in a manner consistent with
18 commonly accepted agricultural practices; or

19 (c) As a result of any of the following activities or conditions:

20 (i) Change in ownership or increase in size;

21 (ii) Nonpermanent cessation or interruption of use as an
22 agricultural operation;

23 (iii) Participation in any government-sponsored agricultural
24 program;

25 (iv) Employment of new technology; or

26 (v) Change in the type of farm product produced.

27 (3) (2) No suit shall be maintained against an agricultural a farm
28 ~~or farm operation or public grain warehouse or public grain warehouse~~
29 operation for public or private nuisance more than one year ~~two years~~
30 after the condition which is the subject matter of the suit reaches a
31 level of offense sufficient to sustain a claim of nuisance.

1 (4) ~~(3)~~ The limitation provided for in this section shall not apply
2 to any action brought to determine compliance with or to enforce a
3 previous order of a court related to the same claim of nuisance or to any
4 claims for additional damages or equitable relief available when an
5 agricultural ~~a farm or farm operation or public grain warehouse or public~~
6 ~~grain warehouse~~ operation fails to remediate a nuisance pursuant to such
7 court order.

8 Sec. 3. Original sections 2-4402 and 2-4403, Reissue Revised
9 Statutes of Nebraska, are repealed.