

FIRST REGULAR SESSION

SENATE BILL NO. 364

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time January 24, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1276S.04I

AN ACT

To repeal section 537.295, RSMo, and to enact in lieu thereof two new sections relating to agricultural operations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 537.295, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 261.270 and 537.295, to read as
3 follows:

261.270. 1. Notwithstanding any other provision of law to the
2 contrary, state law and regulations adopted by state agencies shall
3 preempt the entire field of and constitute a complete and integrated
4 regulatory plan for agricultural operations in Missouri. This includes
5 the preemption of any local laws promulgated under section 192.300,
6 RSMo, that address agricultural operations and their appurtenances.

7 2. Notwithstanding any local law or ordinance, an agricultural
8 operation and its appurtenances are considered to be in compliance
9 with the local law or ordinance if the operation and its appurtenances
10 comply with all applicable state and federal laws and regulations
11 governing the operation or its appurtenances. A local law or ordinance
12 is null and void to the extent that the ordinance attempts to regulate
13 the licensing or operation of an agricultural operation or its
14 appurtenances in any manner not identical to the laws of this state and
15 regulations of the department of natural resources.

16 3. Nothing in this section shall be construed as to limit the
17 planning and zoning authority of counties of the first classification as
18 provided to such counties in this chapter.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

537.295. 1. No agricultural operation or any of its appurtenances shall
2 be deemed to be a nuisance, private or public, **or trespass, or be deemed in**
3 **violation of any local ordinance**, by any changed conditions in **or about** the
4 locality thereof after the facility has been in operation for more than one year,
5 when the facility was not a nuisance at the time the operation began. An
6 agricultural operation protected pursuant to the provisions of this section may
7 reasonably expand, **diversify, or modernize** its operation [in terms of acres or
8 animal units] without losing its protected status so long as all **applicable**
9 county, state, and federal environmental codes, laws, or regulations are met by
10 the agricultural operation. Reasonable expansion, **diversification, or**
11 **modernization** shall not be deemed a public or private nuisance, **trespass, or**
12 **ordinance violation** provided the [expansion] **changed condition** does not
13 create a substantially adverse effect upon the environment or [creates] **create**
14 a hazard to public health and safety, or [creates] **create** a measurably significant
15 difference in environmental pressures upon existing and surrounding neighbors
16 because of increased pollution. Reasonable expansion, **diversification, or**
17 **modernization** shall not include complete relocation of a farming operation by
18 the owner within or without the present boundaries of the farming operation;
19 however, reasonable expansion of like kind that presently exists, may occur. If
20 a poultry or livestock operation is to maintain its protected status following a
21 reasonable expansion, **diversification, or modernization**, the operation must
22 ensure that its waste handling capabilities and facilities meet or exceed minimum
23 recommendations of the University of Missouri extension service for storage,
24 processing, or removal of animal waste. The protected status of an agricultural
25 operation, once acquired, shall be assignable, alienable, and inheritable. The
26 protected status of an agricultural operation, once acquired, shall not be waived
27 by the temporary cessation of farming or by diminishing the size of the
28 operation. [The provisions of this section shall not apply whenever a nuisance
29 results from the negligent or improper operation of any such agricultural
30 operation or its appurtenances.]

31 2. As used in this section the term "agricultural operation and its
32 appurtenances" includes, but is not limited to, any facility used in the production
33 [or], processing, **or storage** for commercial purposes of crops, livestock, **equine**,
34 swine, poultry, livestock products, swine products or poultry products.

35 3. The provisions of this section shall not affect or defeat the right of any
36 person, firm or corporation to recover damages for any injuries sustained by it as

37 a result of the pollution or other change in the quantity or quality of water used
38 by that person, firm or corporation for private or commercial purposes, or as a
39 result of any overflow of land owned by or in the possession of any such person,
40 firm or corporation.

41 4. The provisions of this section shall not apply to any nuisance,
42 **trespass, or ordinance violation** resulting from an agricultural operation
43 located within the limits of any city, town or village on August 13, 1982.

44 5. In any [nuisance] action brought in which an agricultural operation is
45 alleged to be a nuisance, **trespass, or in violation of an ordinance** and which
46 is found to be frivolous by the court, the defendant shall recover the aggregate
47 amount of costs and expenses determined by the court to have been reasonably
48 incurred in his behalf in connection with the defense of such action, together with
49 a reasonable amount for attorneys fees.

50 6. **No agricultural operation or any of its appurtenances shall be**
51 **deemed a nuisance, private or public, or trespass, for conditions**
52 **associated with any farming-related activities conducted by the**
53 **agricultural operation or any of its appurtenances. For purposes of**
54 **this section, "farming-related activities" shall include, but not be limited**
55 **to, planting, cultivating, harvesting, mowing, application of authorized**
56 **pesticides or herbicides, animal husbandry practices and activities,**
57 **land clearing, or the construction of roads, lakes, and ponds associated**
58 **with a farming operation.**

59 7. The provisions of this section shall not apply whenever a
60 nuisance or trespass results from negligent conduct in relation to any
61 agricultural operation or its appurtenances.

62 8. If any provision of sections 537.293 and 537.295 or the
63 application thereof to anyone or to any circumstance is held invalid,
64 the remainder of those sections and the application of such provisions
65 to others or other circumstances shall not be affected thereby.

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