

Limiting Nuisance Actions Against Certain Agricultural Activities; SB 168

SB 168 amends law relating to the protection of farmland and agricultural activities from certain nuisance actions.

Compensatory Damages

The bill creates a new section setting out compensatory damages that may be awarded to a claimant from a nuisance action against farmland used primarily for agricultural activity. The bill divides the level of damages based on whether the nuisance is permanent or temporary. If the nuisance is determined to be permanent, compensatory damages are limited to the reduction in the fair market value of the claimant's property caused by such nuisance, but cannot exceed the fair market value of the claimant's property. If the nuisance is deemed temporary, compensatory damages are limited to the lesser of:

- The diminution in fair rental value of the claimant's property;
- The value of the loss of the use and enjoyment of the claimant's property; or
- The reasonable cost to repair or mitigate any injury to the claimant caused by the nuisance.

The bill limits compensatory damages awarded to a claimant or a claimant's successor for a nuisance action brought against the same defendant or defendant's successors for an alleged nuisance related to the same or similar agricultural activity to the reduction in the fair market value of the claimant's property. Any damages from a previous court order against the defendant or defendant's successors are to be considered in any subsequent case to determine that the total amount of damages awarded does not exceed the fair market value of the claimant's property.

If a defendant makes a good faith effort to abate the alleged nuisance and the effort is unsuccessful, the nuisance is to be deemed not capable of abatement and any compensatory damages are limited to the reduction in the fair market value of the claimant's property.

The bill prevents a person from bringing an action for private nuisance unless the person has an ownership interest in the property alleged to be affected by the nuisance.

Agricultural Activities

The bill allows any agricultural activity conducted on farmland, if consistent with good agricultural practices and established prior to surrounding agricultural or non-agricultural activities, to be presumed reasonable and to not constitute a nuisance. The bill presumes an agricultural activity that is undertaken in conformity with federal, state, and local laws and rules and regulations to be considered good agricultural practice.

The bill provides certain rights to an owner of farmland who conducts agricultural activity protected under the Act, enumerated as follows:

- The owner may reasonably expand the scope of the agricultural activity, including, but not limited to, increasing the acreage or number of animal units or changing agricultural activities, without losing protections so long as the agricultural activity complies with all applicable local, state, and federal environmental codes, resolutions, laws, and rules and regulations;
- The owner may assign or transfer the protections to any successor in interest; and
- The owner will not be deemed to waive the protections by temporarily ceasing or decreasing the scope of the agricultural activity.

The bill amends the definition of the term “agricultural activity” to include the handling, storage, and transportation of agricultural commodities.