

# House File 223 - Introduced

HOUSE FILE \_\_\_\_\_  
BY SANDS

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act providing restrictions on nuisance actions or proceedings  
2 involving farm operations.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1563YH 83  
5 da/nh/14

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1 1 Section 1. Section 352.11, subsection 1, Code 2009, is  
1 2 amended by striking the subsection.  
1 3 Sec. 2. NEW SECTION. 352.13 NUISANCE ACTION OR  
1 4 PROCEEDING == RESTRICTIONS.  
1 5 1. The general assembly finds and declares all of the  
1 6 following:  
1 7 a. Development in rural areas and changes in agricultural  
1 8 technology, practices, and scales of operation have  
1 9 increasingly tended to create conflicts between farm  
1 10 operations and other uses of land.  
1 11 b. To the extent possible, consistent with good public  
1 12 policy, the law should not hamper agricultural production or  
1 13 the use of modern agricultural technology.  
1 14 c. It is in the best interest of the state to establish  
1 15 limits on the remedies available in those conflicts which  
1 16 reach the judicial system.  
1 17 2. This subsection applies to a farm operation conducted  
1 18 on a farm, or on a public right-of-way adjacent to a farm,  
1 19 which is alleged to be a nuisance.  
1 20 a. The farm operation shall not be found to be a nuisance  
1 21 if all of the following apply:  
1 22 (1) The farm operation is conducted without substantial  
1 23 interruption before the plaintiff began the use of property  
1 24 that the plaintiff alleges was interfered with by the farm  
1 25 operation.  
1 26 (2) The farm operation does not present a substantial  
1 27 threat to public health or safety.  
1 28 b. Paragraph "a" applies without regard to whether a  
1 29 change in the farm operation is alleged to have contributed to  
1 30 the nuisance.  
1 31 3. In any nuisance action or proceeding in which a farm  
1 32 operation is found to be a nuisance, and the court orders the  
1 33 defendant to take any action to mitigate the effects of the  
1 34 nuisance, all of the following apply:  
1 35 a. The order shall only apply to that part of the farm  
2 1 operation found to be a nuisance.  
2 2 b. The relief granted shall not substantially restrict or  
2 3 regulate that part of the farm operation found to be a  
2 4 nuisance more than necessary to prevent its substantial threat  
2 5 to public health or safety.  
2 6 c. The court shall request that Iowa state university  
2 7 furnish the court with suggestions for practices suitable to  
2 8 remedy the effects of that part of the farm operation found to  
2 9 be a nuisance, which may include odor mitigation as provided  
2 10 in section 266.49.  
2 11 d. The court shall provide the defendant with a reasonable  
2 12 period to take any action directed in the court's order which  
2 13 shall not be less than one year after the date of the order  
2 14 unless the court determines that remedying the substantial  
2 15 threat to public health or safety requires earlier action.  
2 16 e. The court shall not order the defendant to take any  
2 17 action that substantially and adversely affects the economic  
2 18 viability of the farm, unless no other option is reasonably  
2 19 available to remedy the substantial threat to public health or  
2 20 safety.

2 21 4. a. In any nuisance action or proceeding, if the farm  
2 22 operation is not found to be a nuisance, the court shall award  
2 23 litigation expenses to the defendant which shall be taxed as  
2 24 court costs.

2 25 b. For purposes of this subsection, "litigation expenses"  
2 26 means the sum of the costs, disbursements and expenses,  
2 27 including reasonable attorney, expert witness, and engineering  
2 28 fees necessary to prepare for or participate in an action in  
2 29 which a farm operation is alleged to be a nuisance.

2 30 EXPLANATION

2 31 This bill strikes the current provision in Code section  
2 32 352.11 that restricts the right of a person to bring a  
2 33 nuisance action against a person engaged in farm operations  
2 34 and provides new restrictions in new Code section 352.14.

2 35 These provisions are often referred to as "right-to-farm"  
3 1 laws.

3 2 The current right-to-farm law applies to a farm operation  
3 3 located in an agricultural area designated for agricultural  
3 4 uses by petition of neighboring landowners (Code section  
3 5 352.6) or pursuant to a county agricultural land preservation  
3 6 ordinance (Code section 335.27). Under current law the  
3 7 nuisance protection applies during the period that a farm  
3 8 operation is part of the agricultural area and six years after  
3 9 its exclusion (Code section 352.11). For an analysis of the  
3 10 statute, see the Iowa supreme court case Bormann v. Board of  
3 11 Supervisors, 584 N.W.2d 309 (Iowa 1998).

3 12 The bill provides that a farm operation located in an  
3 13 agricultural area is immune from a nuisance action if two  
3 14 conditions are satisfied: (1) it is conducted without  
3 15 substantial interruption before the plaintiff began the use of  
3 16 their property, and (2) the farm operation does not present a  
3 17 substantial threat to public health or safety. The protection  
3 18 would apply regardless of whether there was a change in the  
3 19 farm operation.

3 20 The bill provides that if the farm operation is found to be  
3 21 a nuisance, a court granting relief cannot substantially  
3 22 restrict or regulate the farm operation, except to the extent  
3 23 that it remedies the substantial threat to public health or  
3 24 safety. In granting the relief, the court must consult with  
3 25 Iowa state university regarding suitable mitigating practices,  
3 26 and provide the defendant with a period of one year to comply,  
3 27 unless exigent circumstances exist. A court could not order a  
3 28 defendant to take action that substantially and adversely  
3 29 affects the economic viability of the farm unless no other  
3 30 remedy is available to remedy the substantial threat to public  
3 31 health or safety.

3 32 The bill also provides that in any action in which a  
3 33 nuisance is not found, the plaintiff would be required to pay  
3 34 the defendant's litigation expenses.

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