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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1221

02/14/2017 Authored by Anderson, P.; Poppe; Miller; Rarick and Dean, M.,
The bill was read for the first time and referred to the Committee on Agriculture Policy
03/02/2017 Adoption of Report: Re-referred to the Committee on Civil Law and Data Practices Policy

1.1 A bill for an act
1.2 relating to agriculture; modifying the nuisance liability protection for certain
1.3 agricultural operations; establishing the farmer-neighbor mediation program;
1.4 requiring mediation for certain disputes with farming operations; amending
1.5 Minnesota Statutes 2016, section 561.19, subdivision 2; proposing coding for new
1.6 law as Minnesota Statutes, chapter 584.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2016, section 561.19, subdivision 2, is amended to read:

1.9 Subd. 2. **Agricultural operation not a nuisance.** (a) An agricultural operation is not
1.10 and shall not become a private or public nuisance after two years from its established date
1.11 of operation as a matter of law if the operation:

- 1.12 (1) is located in an agriculturally zoned area;
- 1.13 (2) complies with the provisions of all applicable federal, state, or county laws,
1.14 regulations, rules, and ordinances and any permits issued for the agricultural operation; and
- 1.15 (3) operates according to generally accepted agricultural practices.

1.16 (b) For a period of two years from its established date of operation, there is a rebuttable
1.17 presumption that an agricultural operation in compliance with the requirements of paragraph
1.18 (a), clauses (1) to (3), is not a public or private nuisance.

1.19 (c) The provisions of this subdivision do not apply:

- 1.20 ~~(1) to an animal feedlot facility with a swine capacity of 1,000 or more animal units as~~
1.21 ~~defined in the rules of the Pollution Control Agency for control of pollution from animal~~
1.22 ~~feedlots, or a cattle capacity of 2,500 animals or more;~~

2.1 ~~(2)~~(1) to any prosecution for the crime of public nuisance as provided in section 609.74
 2.2 or to an action by a public authority to abate a particular condition which is a public nuisance;
 2.3 or

2.4 ~~(3)~~(2) to any enforcement action brought by a local unit of government related to zoning
 2.5 under chapter 394 or 462.

2.6 (d) Civil proceedings against an agricultural operation are subject to farmer-neighbor
 2.7 mediation under chapter 584.

2.8 Sec. 2. **[584.01] CITATION.**

2.9 Sections 584.01 to 584.12 may be cited as the "Farmer-Neighbor Mediation Act."

2.10 Sec. 3. **[584.02] LEGISLATIVE FINDINGS.**

2.11 The legislature finds that nuisance claims brought against agricultural operations are
 2.12 uniquely situated and readily amenable to alternative dispute resolution. Alternative dispute
 2.13 resolution benefits nuisance claimants by providing an inexpensive forum that allows
 2.14 claimants to be heard and benefits agricultural operations by providing them with a reasonable
 2.15 opportunity to undertake mitigation efforts to abate any alleged nuisance. Moreover, the
 2.16 legislature finds that mediation is an effective and desirable form of alternative dispute
 2.17 resolution in the agricultural sector. Therefore, an orderly process with state assistance that
 2.18 fosters agreement between nuisance claimants and agricultural operations preserves the
 2.19 general welfare and integrity of the state.

2.20 Sec. 4. **[584.03] DEFINITIONS.**

2.21 Subdivision 1. **Applicability.** The definitions in this section apply to sections 584.03 to
 2.22 584.12.

2.23 Subd. 2. **Agricultural operation.** "Agricultural operation" has the meaning given in
 2.24 section 561.19, subdivision 1.

2.25 Subd. 3. **Director.** "Director" means the director of the Minnesota Extension Service or
 2.26 the director's designee.

2.27 Subd. 4. **Dispute.** "Dispute" means a controversy between an agricultural operation and
 2.28 other party that arises from a claim eligible to be resolved in a civil proceeding in law or
 2.29 equity, if the claim relates to an action or actions of an agricultural operation that is alleged
 2.30 to be or cause a nuisance.

3.1 Subd. 5. **File.** "File" means to deliver by the required date by certified mail or another
 3.2 method acknowledging receipt.

3.3 Subd. 6. **Mediator.** "Mediator" means a farm mediator appointed by the director.

3.4 Subd. 7. **Nuisance.** "Nuisance" means anything that is injurious to health, or indecent
 3.5 or offensive to the senses, or an obstruction to the free use of property, so as to interfere
 3.6 with the comfortable enjoyment of life or property.

3.7 Subd. 8. **Participate.** "Participate" means attending a mediation meeting and having
 3.8 knowledge about and discussing issues concerning a subject relating to a dispute.

3.9 Subd. 9. **Other party.** "Other party" means any person or persons having a dispute with
 3.10 an agricultural operation.

3.11 Subd. 10. **Serve.** "Serve" means:

3.12 (1) personal service as in a district court civil action;

3.13 (2) service by certified mail using return receipt signed by addressee only;

3.14 (3) actual delivery of required documents with signed receipt; or

3.15 (4) if an unsuccessful attempt is made to serve under clause (1) or (2), service may be
 3.16 made by mail with a certificate of mailing to the last known address of the addressee.

3.17 For purposes of serving under clause (4), the addressee is considered to have been served
 3.18 the documents five days after the date on the certificate of mailing.

3.19 Sec. 5. **[584.04] FARM MEDIATION.**

3.20 Subdivision 1. **Training.** The director must provide training and support for mediators.

3.21 Subd. 2. **Appointment.** The director must provide mediators by contracting with qualified
 3.22 persons experienced in agriculture, agricultural law, and negotiation.

3.23 Subd. 3. **Administration.** The director may appoint a farm mediation administrator.
 3.24 The administrator and director shall provide training for farm mediators and coordinate
 3.25 community legal education programs for farmers.

3.26 Sec. 6. **[584.05] VOLUNTARY MEDIATION PROCEEDINGS.**

3.27 An agricultural operation or other party may request mediation of a dispute by a farm
 3.28 mediator by applying to the director. The director shall make voluntary mediation application
 3.29 forms available at the county recorder's and county extension office in each county. The

4.1 director must evaluate each request and may direct a mediator to meet with the agricultural
4.2 operation and other party to assist in mediation.

4.3 **Sec. 7. [584.06] MANDATORY MEDIATION PROCEEDINGS.**

4.4 Subdivision 1. **Mediation request.** (a) Any other party desiring to initiate a civil
4.5 proceeding against an agricultural operation to resolve a dispute must serve a mediation
4.6 request on the agricultural operation and the director. The mediation request must state the
4.7 names and addresses of all other parties involved in the dispute, the name and address of
4.8 the agricultural operation involved in the dispute, and a general statement that mediation is
4.9 requested. The other party must also file with the director proof of the date the request for
4.10 mediation was served on the agricultural operation. The other party shall not begin the civil
4.11 proceeding until the other party receives a mediation release under subdivision 7.

4.12 (b) The director shall combine all mediation requests for the same agricultural operation
4.13 that are received prior to the initial consultation into one mediation proceeding.

4.14 (c) The requirements of paragraph (a) are jurisdictional prerequisites to filing a civil
4.15 action that initiates a civil proceeding to resolve a dispute subject to this chapter.

4.16 Subd. 2. **Initial consultation.** No less than 30 days after receipt of the request for
4.17 mediation, a mediator shall conduct an initial consultation with the other party privately
4.18 and without charge. At the initial consultation, the mediator shall hear the other party's
4.19 claims and inform the other party of the litigation risks that would be involved in commencing
4.20 a civil proceeding to resolve the dispute. Mediation may be waived after the initial
4.21 consultation if the other party and the agricultural operation involved in the dispute agree
4.22 in writing.

4.23 Subd. 3. **Supplemental information; opportunity to cure.** (a) If mediation is not
4.24 waived after the initial consultation, the other party shall file with the director, and serve
4.25 on the agricultural operation, information required by the director to conduct mediation,
4.26 including, at a minimum:

4.27 (1) a detailed statement that explains with particularity the conditions creating the
4.28 nuisance giving rise to the dispute;

4.29 (2) a report from a qualified expert that explains with particularity the conditions creating
4.30 the nuisance giving rise to the dispute and the scientific basis for why the conditions create
4.31 a nuisance; and

5.1 (3) a statement of settlement efforts that have taken place between the other party and
5.2 the agricultural operation involved in the dispute and, if no settlement efforts have taken
5.3 place, an explanation of why the settlement efforts would have been futile.

5.4 (b) Within 20 days of receiving the other party's supplemental information, the agricultural
5.5 operation may file with the director, and serve on the other party, a plan proposing actions
5.6 that the agricultural operation will take to abate the conditions creating the nuisance giving
5.7 rise to the dispute. Upon filing the plan, the agricultural operation shall have a reasonable
5.8 amount of time to implement it, during which time the proceedings of this chapter will be
5.9 stayed.

5.10 (c) If the agricultural operation's plan abates the nuisance after the plan has been
5.11 implemented, then the director shall dismiss the other party's mediation request. Dismissal
5.12 of the other party's mediation request does not constitute a mediation release.

5.13 (d) If the agricultural operation's plan does not abate the nuisance after the plan has been
5.14 implemented, then the other party may continue the mediation process imposed by this
5.15 chapter by filing with the director, and serving on the agricultural operation, a detailed
5.16 statement that explains with particularity the conditions creating the nuisance giving rise
5.17 to the dispute that exist after implementation of the agricultural operation's plan.

5.18 Subd. 4. **Mediation proceeding notice.** (a) By ten days after the time in which the
5.19 agricultural operation may file and serve a plan under subdivision 3, paragraph (b), the
5.20 director shall send a mediation proceeding notice to the agricultural operation and the other
5.21 party.

5.22 (b) The mediation proceeding notice must state:

5.23 (1) the name and address of the agricultural operation and the other party;

5.24 (2) that the other party has requested mediation under the Farmer-Neighbor Mediation
5.25 Act;

5.26 (3) the time and place for the mediation proceeding;

5.27 (4) a list of the names of three mediators that may be assigned to the mediation
5.28 proceeding, along with background information on those mediators, including biographical
5.29 information, a summary of previous mediation experience, and the number of agreements
5.30 signed by parties to previous mediation;

5.31 (5) that the agricultural operation and the other party may each request the director to
5.32 exclude one mediator by notifying the director within three days after receiving the notice;

6.1 (6) that in lieu of having a mediator assigned by the director, the agricultural operation
6.2 and any other party may agree to select and pay for a professional mediator that is approved
6.3 by the director; and

6.4 (7) that the Farmer-Neighbor Mediation Act prohibits the other party from beginning
6.5 or continuing a proceeding to resolve a dispute until it obtains a mediation release.

6.6 (c) The mediation proceeding must be held no less than 30 days after the director sends
6.7 the mediation proceeding notice.

6.8 (d) The agricultural operation and the other party may each request the director to exclude
6.9 one mediator from the list by sending the director a notice to exclude the mediator within
6.10 three days after receiving the mediation proceeding notice.

6.11 (e) In lieu of the director assigning a mediator, the agricultural operation and any other
6.12 party may agree to select and pay for a professional mediator for the mediation proceeding.
6.13 The director must approve the professional mediator before the professional mediator may
6.14 be assigned to the mediation proceeding. The professional mediator may not be approved
6.15 unless the professional mediator prepares and signs an affidavit:

6.16 (1) disclosing any biases, relationships, or previous associations with the agricultural
6.17 operation or other party subject to the mediation proceedings;

6.18 (2) stating certifications, training, or qualifications as a professional mediator;

6.19 (3) disclosing fees to be charged or a rate schedule of fees for the mediation proceeding;
6.20 and

6.21 (4) affirming to uphold the Farmer-Neighbor Mediation Act and faithfully discharge the
6.22 duties of a mediator.

6.23 Subd. 5. **Mediation proceeding.** (a) The agricultural operation and other party shall
6.24 participate in a mediation proceeding with a mediator at the time specified in the mediation
6.25 proceeding notice. At the mediation session, the mediator shall:

6.26 (1) listen to the other party and the agricultural operation;

6.27 (2) attempt to mediate between the other party and the agricultural operation;

6.28 (3) encourage compromise and workable solutions; and

6.29 (4) advise, counsel, and assist the other party and the agricultural operation in attempting
6.30 to arrive at an agreement for the future conduct of relations between them.

7.1 (b) If the other party and the agricultural operation do not reach an agreement at the
7.2 mediation proceeding, either the other party or the agricultural operation may request, at
7.3 the end of the mediation proceeding, that an additional mediation proceeding be conducted
7.4 in no less than 30 days. If an additional mediation proceeding is requested, it must be held,
7.5 and the mediator shall have responsibilities at the additional mediation proceeding identical
7.6 to those required at the prior mediation proceeding.

7.7 Subd. 6. **Mediation agreement.** (a) If an agreement is reached between the agricultural
7.8 operation and other party, the mediator shall witness and sign a written mediation agreement
7.9 and have it signed by the agricultural operation and other party.

7.10 (b) The agricultural operation and other party:

7.11 (1) are bound by the terms of the agreement;

7.12 (2) may enforce the mediation agreement as a legal contract; and

7.13 (3) may use the mediation agreement as a defense against an action contrary to the
7.14 mediation agreement.

7.15 Subd. 7. **Mediation release.** (a) If an agreement is not reached between the other party
7.16 and the agricultural operation at the mediation proceeding, the mediator shall issue a
7.17 mediation release unless the other party fails to personally attend and participate in all
7.18 mediation meetings. The mediator shall issue a mediation release if the agricultural operation
7.19 waives or fails to attend and participate in all mediation meetings, regardless of participation
7.20 by the other party. However, if the other party or the agricultural operation is not a natural
7.21 person, the other party or agricultural operation must be represented by a natural person
7.22 who is an officer, director, employee, or partner of the other party or agricultural operation.
7.23 If a person acts in a fiduciary capacity for the other party or agricultural operation, the
7.24 fiduciary may represent the other party or agricultural operation. If the other party or
7.25 agricultural operation or eligible representative is not able to attend and participate as
7.26 required in this paragraph due to physical infirmity, mental infirmity, or other exigent
7.27 circumstances determined reasonable by the director, the other party or agricultural operation
7.28 must be represented by another natural person. Any representative of the other party or the
7.29 agricultural operation must be authorized to sign instruments provided by this chapter. This
7.30 section does not require that the other party and the agricultural operation reach an agreement.
7.31 This section does not require that the other party and the agricultural operation change a
7.32 position, alter an activity that is a subject of the dispute, or restructure a contract in order
7.33 to receive a mediation release.

8.1 (b) The mediator shall promptly notify the other party and the agricultural operation by
8.2 certified mail of a denial to issue a mediation release and the reasons for the denial. The
8.3 notice shall state that the other party or the agricultural operation has seven days from the
8.4 date that the notice is delivered to appeal the mediator's decision to the director, pursuant
8.5 to procedures adopted by the director. After a final decision by the director, the party may
8.6 seek an action for judicial review pursuant to section 584.12.

8.7 (c) If mediation is waived by both the agricultural operation and the other party at any
8.8 point during the mediation process imposed by this chapter, the parties may sign a statement
8.9 prepared by the mediator that mediation was waived or that the parties did not reach an
8.10 agreement. If any party does not sign the statement, the mediator shall sign the statement.
8.11 The statement constitutes a mediation release.

8.12 **Sec. 8. [584.07] GOOD FAITH REQUIRED.**

8.13 Subdivision 1. **Obligation of good faith.** The other party and the agricultural operation
8.14 must engage in mediation in good faith. The other party is not mediating in good faith if
8.15 the other party rejects measures proposed by the agricultural operation that could mitigate
8.16 the conditions that the other party alleges to cause a nuisance without providing justification
8.17 for the rejection.

8.18 Subd. 2. **Party's bad faith; mediator's affidavit.** If the mediator determines that either
8.19 the other party or the agricultural operation is not participating in good faith, the mediator
8.20 shall file an affidavit indicating the reasons for the finding with the director and provide
8.21 copies of the affidavit to the agricultural operation and the other party.

8.22 Subd. 3. **Review of good faith finding.** (a) Upon petition by either the other party or
8.23 the agricultural operation, a court may review a mediator's affidavit of lack of good faith
8.24 or a mediator's failure to file an affidavit of lack of good faith. The review is limited to
8.25 whether the mediator committed an abuse of discretion in filing or failing to file an affidavit
8.26 of lack of good faith. The petition must be reviewed by the court within 20 days after the
8.27 petition is filed.

8.28 (b) If the court finds that either the other party or the agricultural operation failed to
8.29 mediate in good faith, the court may:

8.30 (1) order court-supervised mediation; or

8.31 (2) require that the mediation process imposed by this chapter be restarted.

8.32 (c) A mediator may offer testimony but is not required to testify as part of the court's
8.33 review.

9.1 Sec. 9. **[584.08] FORMS AND COMPENSATION.**

9.2 Subdivision 1. **Compensation.** The director shall set the compensation of mediators.

9.3 Subd. 2. **Forms.** The director shall adopt voluntary mediation application forms.

9.4 Sec. 10. **[584.09] EXTENSION OF DEADLINES.**

9.5 Upon petition by the agricultural operation or other party, the farm mediation service
9.6 may, for good cause, extend a deadline imposed.

9.7 Sec. 11. **[584.10] PRIVATE DATA.**

9.8 All data regarding agricultural operations and other parties created, collected, and
9.9 maintained by the mediators or the director are classified as private data on individuals
9.10 under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9.

9.11 Sec. 12. **[584.11] JUDICIAL REVIEW.**

9.12 An action for judicial review shall be brought in equity, and the action shall be limited
9.13 to whether, based on clear and convincing evidence, the decision by the director is an abuse
9.14 of discretion. The action may be brought in the district court in which the affected agricultural
9.15 operation is located. Upon reversing the decision by the director, the court shall order that
9.16 the director issue a mediation release.

9.17 Sec. 13. **[584.12] EFFECT OF MEDIATION.**

9.18 Subdivision 1. **Rights not affected.** An interest in property, or rights and obligations
9.19 under a contract, are not affected by the failure of a person to obtain a mediation release,
9.20 regardless of its validity.

9.21 Subd. 2. **Timing.** Time periods relating to a claim, including applicable statutes of
9.22 limitations, shall be suspended upon filing a mediation request. Time periods affecting a
9.23 claim in a civil proceeding shall be suspended upon filing a mediation request. The
9.24 suspension shall terminate upon dismissal of a mediation request, waiver of mediation,
9.25 signing a mediation agreement, or signing a mediation release.

9.26 Sec. 14. **[584.13] INCONSISTENT LAWS.**

9.27 The Farmer-Neighbor Mediation Act has precedence over any inconsistent or conflicting
9.28 laws and statutes.