STATES' RIGHT-TO-FARM STATUTES

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Alabama
Ala.Code 1975 § 6-5-127

§ 6-5-127. Nuisance exceptions; right of action for pollution of waters, etc.; relation to municipal ordinances.

(a) No agricultural, manufacturing, or other industrial plant or establishment, farming operation facility, or any racetrack for automobiles or motorcycles, or both, operated in conjunction with a museum that is owned by a nonprofit organization and has a building and collection on display which together have a minimum value of at least one million dollars ($1,000,000), or any of its appurtenances or the operation thereof shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same has been in operation for more than one year during which such plant, facility, establishment, farming operation facility, or racetrack, its appurtenances or the operation thereof has not been found by a court of competent jurisdiction to be a nuisance; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, farming operation facility, or racetrack, or any of its appurtenances.

(b) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damage sustained by them on account of any pollution of, or change in the condition of, the waters of any stream or on account of any overflow of the lands of any person, firm, or corporation.

(c) Any and all ordinances heretofore or hereafter adopted by any municipal corporation in which such plant, establishment, farming operation facility, or racetrack is located,

which purports to make the operation of any such plant, establishment, farming operation facility, or racetrack, or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this section are, and shall be, null and void; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, farming operation facility, or racetrack, or any of its appurtenances.

(d) This section shall not be construed to invalidate any contracts heretofore made, but, insofar as contracts are concerned, is only applicable to contracts and agreements to be made in the future.

Alaska
AS § 09.45.235

§ 09.45.235. Agricultural operations as private nuisances

(a) An agricultural facility or an agricultural operation at an agricultural facility is not and does not become a private nuisance as a result of a changed condition that exists in the area of the agricultural facility if the agricultural facility was not a nuisance at the time the agricultural facility began agricultural operations. For purposes of this subsection, the time an agricultural facility began agricultural operations refers to the date on which any type of agricultural operation began on that site regardless of any subsequent expansion of the agricultural facility or adoption of new technology. An agricultural facility or an agricultural operation at an agricultural facility is not a private nuisance if the governing body of the local soil and water conservation district advises the commissioner in writing that the facility or operation is consistent with a soil conservation plan developed and implemented in cooperation with the district.

(b) The provisions of (a) of this section do not apply to

(1) liability resulting from improper, illegal, or negligent conduct of agricultural operations; or

(2) flooding caused by the agricultural operation.

(c) The provisions of (a) of this section supersede a municipal ordinance, resolution, or regulation to the contrary.

(d) In this section,

(1) “agricultural facility” means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment that is used or is intended for use

in the commercial production or processing of crops, livestock, or livestock products, or that is used in aquatic farming;

(2) "agricultural operation" means

(A) any agricultural and farming activity such as

(i) the preparation, plowing, cultivation, conserving, and tillage of the soil;

(ii) dairying;

(iii) the operation of greenhouses;

(iv) the production, cultivation, rotation, fertilization, growing, and harvesting of an agricultural, floricultural, apicultural, or horticultural crop or commodity;

(v) the breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock;

(vi) forestry or timber harvesting, manufacturing, or processing operations;

(vii) the application and storage of pesticides, herbicides, animal manure, treated sewage sludge or chemicals, compounds, or substances to crops, or in connection with the production of crops or livestock;

(viii) the manufacturing of feed for poultry or livestock;

(ix) aquatic farming;

(x) the operation of roadside markets; and

(B) any practice conducted on the agricultural facility as an incident to or in conjunction with activities described in (A) of this paragraph, including the

application of existing, changed, or new technology, practices, processes, or procedures;

(3) “livestock” means horses, cattle, sheep, bees, goats, swine, poultry, reindeer, elk, bison, musk oxen, and other animals kept for use or profit.

Arizona
Ariz. Rev. Stat. §§ 3-111 to 3-112

Current through the Second Regular Session of the Fifty-Fourth Legislature (2020)

§ 3-111. Definitions

In this chapter, unless the context otherwise requires:

(1) "Agricultural operations" means all activities by the owner, lessee, agent, independent contractor and supplier conducted on any facility for the production of crops, livestock, poultry, livestock products or poultry products or for the purposes of agritourism.

(2) "Agritourism" means any activity that allows members of the general public, for recreational or educational purposes, to view, enjoy or participate in rural activities, including farming, ranching, historical, cultural, u-pick, harvest-your-own produce or natural activities and attractions occurring on property defined as agricultural real property pursuant to § 42-12151 if the activity is conducted in connection with and directly related to a business whose primary income is derived from producing livestock or agricultural commodities for commercial purposes.

(3) "Farmland" means land devoted primarily to the production for commercial purposes of livestock or agricultural commodities.

§ 3-112. Agricultural operations; nuisance liability

(a) Agricultural operations conducted on farmland that are consistent with good agricultural practices and established prior to surrounding nonagricultural uses are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety.

(b) Agricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practice and not adversely affecting the public health and safety.

Arkansas
Ark. Code Ann. § 2-4-101 to 2-4-108

The constitution and statutes are current through the 2020 First Extraordinary Session and the 2020 Fiscal Session of the 92nd Arkansas General Assembly and changes made by the Arkansas Code Revision Commission received through July 10, 2020.

§ 2-4-101. Purpose

It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest lands and other facilities for the production of food, fiber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many are discouraged from making investments in farm or other agricultural improvements. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

§ 2-4-102. Definition

As used in this chapter:

(1) "Agricultural operation" or "farming operation" means an agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including:

(A) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;

(B) the planting, cultivating, harvesting, and processing of crops and timber; and

(C) the production of any plant or animal species in a controlled freshwater or saltwater environment; and

(2) "Agriculture" includes agriculture, silviculture, and aquaculture.

§ 2-4-103. Contracts and agreements; applicability

This chapter shall not be construed to invalidate any contracts heretofore made, but insofar as contracts are concerned shall be applicable only with respect to contracts and agreements made subsequent to March 3, 1981.

§ 2-4-105. Local ordinances void

Any and all ordinances adopted by any municipality or county in which an agricultural operation is located making or having the effect of making the agricultural operation or any agricultural facility or its appurtenances a nuisance or providing for an abatement of the agricultural operation or the agricultural facility or its appurtenances as a nuisance in the circumstances set forth in this chapter are void and shall have no force or effect.

§ 2-4-106. Proceedings for injuries

The provisions of this chapter shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of the lands of any person, firm, or corporation.

§ 2-4-107. Operation not to become nuisance

(a) An agricultural operation or its facilities or appurtenances shall not be or become a public or private nuisance as a result of any changed conditions in and about the locality after it has been in operation for a period of one (1) year or more when the agricultural

operation or its facilities or appurtenances were not a nuisance at the time the agricultural operation began.

(b)(1) Except as provided in this section, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.

(2) An agricultural operation that employs methods or practices that are commonly or reasonably associated with agricultural production shall not be found to be a public or private nuisance as a result of any of the following activities or conditions:

(A) Change in ownership or size;

(B) nonpermanent cessation or interruption of farming;

(C) participation in any government-sponsored agricultural program;

(D) employment of new technology; or

(E) change in the type of agricultural product produced.

(c)(1) Notwithstanding any other provision of this section to the contrary, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation:

(A) Was established prior to the commencement of the use of the area surrounding the agricultural operation for nonagricultural activities; and

(B) employs methods or practices that are commonly or reasonably associated with agricultural production.

(2) Employment of methods or practices that are commonly or reasonably associated with agricultural production or are in compliance with any state or

federally issued permit shall create a rebuttable presumption that an agricultural operation is not a nuisance.

(d) The court may award expert fees, reasonable court costs, and reasonable attorney's fees to the prevailing party in any action brought to assert that an agricultural operation is a public or private nuisance.

§ 2-4-108. Liberal construction

This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.

California
Cal. Civ. Code § 3482.5

Current with urgency legislation through Ch. 372 of 2020 Reg. Sess.

West's Ann. Cal. Civ. Code § 3482.5. Agricultural activity not a nuisance; exceptions; construction with other laws

(a)(1) No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began.

(2) No activity of a district agricultural association that is operated in compliance with Division 3 (commencing with Section 3001) of the Food and Agricultural Code, shall be or become a private or public nuisance due to any changed condition in or about the locality, after it has been in operation for more than three years if it was not a nuisance at the time it began. This paragraph shall not apply to any activities of the 52nd District Agricultural Association that are conducted on the grounds of the California Exposition and State Fair, nor to any public nuisance action brought by a city, county, or city and county alleging that the activities, operations, or conditions of a district agricultural association have substantially changed after more than three years from the time that the activities, operations, or conditions began.

(b) Paragraph (1) of subdivision (a) shall not apply if the agricultural activity, operation, or facility, or appurtenances thereof obstruct the free passage or use, in the

customary manner, of any navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway.

(c) Paragraph (1) of subdivision (a) shall not invalidate any provision contained in the Health and Safety Code, Fish and Game Code, Food and Agricultural Code, or Division 7 (commencing with Section 13000) of the Water Code., if the agricultural activity, operation, or facility, or appurtenances thereof constitute a nuisance, public or private, as specifically defined or described in any of those provisions.

(d) This section shall prevail over any contrary provision of any ordinance or regulation of any city, county, city and county, or other political subdivision of the state. However, nothing in this section shall preclude a city, county, city and county, or other political subdivision of this state, acting within its constitutional or statutory authority and not in conflict with other provisions of state law, from adopting an ordinance that allows notification to a prospective homeowner that the dwelling is in close proximity to an agricultural activity, operation, facility, or appurtenances thereof and is subject to the provisions of this section consistent with Section 1102.6a.

(e) For purposes of this section, the term "agricultural activity, operation, or facility, or appurtenances thereof" shall include, but not be limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish, or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.

Colorado
Colo. Rev. Stat. §§ 35-3.5-101 to 35-3.5-103

Current through all legislation of the 2020 Regular Session.

§ 35-3.5-101. Legislative declaration

It is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly recognizes that, when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, a number of agricultural operations are forced to cease operations, and many others are discouraged from making investments in farm improvements. It is the purpose of this article to reduce the loss to the state of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is further recognized that units of local government may adopt ordinances or pass resolutions that provide additional protection for agricultural operations consistent with the interests of the affected agricultural community, without diminishing the rights of any real property interests.

§ 35-3.5-102. Agricultural operation deemed not nuisance; state agricultural commission; attorney fees; exceptions

(a)(1) Except as provided in this section, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.

(2) An agricultural operation that employs methods or practices that are commonly or reasonably associated with agricultural production shall not be found to be a public or private nuisance as a result of any of the following activities or conditions:

(A) Change in ownership;

(B) nonpermanent cessation or interruption of farming;

(C) participation in any government sponsored agricultural program;

(D) employment of new technology; or

(E) change in the type of agricultural product produced.

(b)(1) Notwithstanding any other provision of this section to the contrary, an agricultural operation shall not be found to be a public or private nuisance if such agricultural operation:

(A) Was established prior to the commencement of the use of the area surrounding such agricultural operation for nonagricultural activities;

(B) employs methods or practices that are commonly or reasonably associated with agricultural production; and

(C) is not operating negligently.

(2) Employment of methods or practices that are commonly or reasonably associated with agricultural production shall create a rebuttable presumption that an agricultural operation is not operating negligently.

(c) The court may, pursuant to sections 13-16-122 and 13-17-102, C.R.S., award expert fees, reasonable court costs, and reasonable attorney fees to the prevailing party in any action brought to assert that an agricultural operation is a private or public nuisance. Nothing in this section shall be construed as restricting, superseding, abrogating, or

contravening in any way the provisions of section 25-7-138(5), C.R.S., and 25-8-501.1(8), C.R.S.

(d) As used in this article, "agricultural operation" has the same meaning as "agriculture", as defined in section 35-1-102(1).

(e) Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this section is void; except that the provisions of this subsection shall not apply when an agricultural operation is located within the corporate limits of any city or town on July 1, 1981, or is located on a property that the landowner voluntarily annexes to a municipality on or after July 1, 1981.

(f) This section shall not invalidate any contracts made prior to September 1, 2000, but shall be applicable only to contracts and agreements made on or after September 1, 2000.

(g) A local government may adopt an ordinance or pass a resolution that provides additional protection for agricultural operations; except that no such ordinance or resolution shall prevent an owner from selling his or her land or prevent or hinder the owner in seeking approval to put the land into alternative use.

§ 35-3.5-103. Severability

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Connecticut
Conn. Gen. Stat. § 19a-341

The statutes and Constitution are current with all enactments of the 2020 Regular Session, the 2020 July Special Session, and the 2020 September Special Session.

§ 19a-341. Agricultural or farming operation not deemed a nuisance; exceptions. Spring or well water collection operation not deemed a nuisance

(a) Notwithstanding any general statute or municipal ordinance or regulation pertaining to nuisances to the contrary, no agricultural or farming operation, place, establishment or facility, or any of its appurtenances, or the operation thereof, shall be deemed to constitute a nuisance, either public or private, due to alleged objectionable (1) odor from livestock, manure, fertilizer or feed, (2) noise from livestock or farm equipment used in normal, generally acceptable farming procedures, (3) dust created during plowing or cultivation operations, (4) use of chemicals, provided such chemicals and the method of their application conform to practices approved by the Commissioner of Energy and Environmental Protection or, where applicable, the Commissioner of Public Health, or (5) water pollution from livestock or crop production activities, except the pollution of public or private drinking water supplies, provided such activities conform to acceptable management practices for pollution control approved by the Commissioner of Energy and Environmental Protection; provided such agricultural or farming operation, place, establishment or facility has been in operation for one year or more and has not been substantially changed, and such operation follows generally accepted agricultural practices. Inspection and approval of the agricultural or farming operation, place, establishment or facility by the Commissioner of Agriculture or his

designee shall be prima facie evidence that such operation follows generally accepted agricultural practices.

(b) Notwithstanding any general statute or municipal ordinance or regulation pertaining to nuisances, no operation to collect spring water or well water, as defined in section 21a-150, shall be deemed to constitute a nuisance, either public or private, due to alleged objectionable noise from equipment used in such operation provided the operation (1) conforms to generally accepted practices for the collection of spring water or well water, (2) has received all approvals or permits required by law, and (3) complies with the local zoning authority's time, place and manner restrictions on operations to collect spring water or well water.

(c) The provisions of this section shall not apply whenever a nuisance results from negligence or willful or reckless misconduct in the operation of any such agricultural or farming operation, place, establishment or facility, or any of its appurtenances.

Delaware
3 Del.C. § 1401

§ 1401. Agricultural and forestal operations not considered nuisances; exception

No agricultural or forestal operation within this State which has been in operation for a period of more than 1 year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural or forestal operation is located. For the purpose of this section, "agricultural operation" shall be defined as set forth in § 8141(a) of Title 10. In any nuisance action, public or private, against an agricultural operation or its principals or employees, including forestall activity, proof that the agricultural operation, including forestall activity, has existed for 1 year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits. If the operation is in compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with good agricultural practice. No state or local law-enforcement agency may bring a criminal or civil action against an agricultural operation for an activity that is in compliance with all applicable state and federal laws, regulations, and permits.

Florida
Fla. Stat. § 823.14

Current through Chapter 184 (End) of the 2020 Second Regular Session of the Twenty-Sixth Legislature.

§ 823.14. Florida Right to Farm Act

(a) Short title. This section shall be known and may be cited as the "Florida Right to Farm Act."

(b) Legislative findings and purpose. The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The Legislature further finds that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. It is the purpose of this act to protect reasonable agricultural activities conducted on farm land from nuisance suits.

(c) Definitions. As used in this section:

(1) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.

(2) "Farm operation" means all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the

production of farm, honeybee, or apiculture products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(3) "Farm product" means any plant, as defined in insect useful to humans and includes, but is not limited to, any product derived therefrom.

(4) "Established date of operation" means the date the farm operation commenced. If the farm operation is subsequently expanded within the original boundaries of the farm land, the established date of operation of the expansion shall also be considered as the date the original farm operation commenced. If the land boundaries of the farm are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent established date of operation. The expanded operation shall not divest the farm operation of a previous established date of operation.

(d) Farm operation not to be or become a nuisance.

(1) No farm operation which has been in operation for 1 year or more since its established date of operation and which was not a nuisance at the time of its established date of operation shall be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices, except that the following conditions shall constitute evidence of a nuisance:

(A) The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.

(B) The presence of improperly built or improperly maintained septic tanks, water closets, or privies.

(C) The keeping of diseased animals which are dangerous to human health, unless such animals are kept in accordance with a current state or federal disease control program.

(D) The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.

(2) No farm operation shall become a public or private nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with Best Management Practices adopted by local, state, or federal agencies if such farm has been in operation for 1 year or more since its established date of operation and if it was not a nuisance at the time of its established date of operation.

(e) When expansion of operation not permitted. This act shall not be construed to permit an existing farm operation to change to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing farm operation is adjacent to an established homestead or business on March 15, 1982.

(f) Limitation on duplication of government regulation. It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s.

487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461, where such activity is regulated through implemented best management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. When an activity of a farm operation takes place within a wellfield protection area as defined in any wellfield protection ordinance adopted by a local government, and the adopted best management practice or interim measure does not specifically address wellfield protection, a local government may regulate that activity pursuant to such ordinance. This subsection does not limit the powers and duties provided for in s. 373.4592 or limit the powers and duties of any local government to address an emergency as provided for in chapter 252.

Georgia
Ga. Code Ann., § 41-1-7

§ 41-1-7. Agricultural facilities and operations; legislative determination and declaration of when deemed a nuisance

Currentness

(a) It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest land and facilities for the production or distribution of food and other agricultural products, including without limitation forest products. When nonagricultural land uses extend into agricultural or agriculture-supporting industrial or commercial areas or forest land or when there are changed conditions in or around the locality of an agricultural facility or agricultural support facility, such operations often become the subject of nuisance actions. As a result, such facilities are sometimes forced to cease operations. Many others are discouraged from making investments in agricultural support facilities or farm improvements or adopting new related technology or methods. It is the purpose of this Code section to reduce losses of the state's agricultural and forest land resources by limiting the circumstances under which agricultural facilities and operations or agricultural support facilities may be deemed to be a nuisance.

(b) As used in this Code section, the term:

(1) “Agricultural area” means any land which is, or may be, legally used for an agricultural operation under applicable zoning laws, rules, and regulations at the time of commencement of the agricultural operation of the agricultural facility at issue and throughout the first year of operation of such agricultural facility. Any land which is not subject to zoning laws, rules, and regulations at the time of commencement of an

agricultural operation of an agricultural facility and throughout the first year of operation of such agricultural facility shall be deemed an “agricultural area” for purposes of this Code section.

(2) “Agricultural facility” includes, but is not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, timber, forest products, or products which are used in commercial aquaculture. Such term shall also include any farm labor camp or facilities for migrant farm workers.

(3) “Agricultural operation” means:

(A) The plowing, tilling, or preparation of soil at an agricultural facility;

(B) The planting, growing, fertilizing, harvesting, or otherwise maintaining of crops as defined in Code Section 1-3-3 and also timber and trees that are grown for purposes other than for harvest and for sale;

(C) The application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, timber, livestock, animals, or poultry;

(D) The breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock, hogs, equines, chickens, turkeys, poultry or other fowl normally raised for food, mules, cattle, sheep, goats, dogs, rabbits, or similar farm animals for commercial purposes;

(E) The production and keeping of honeybees, the production of honeybee products, and honeybee processing facilities;

(F) The production, processing, or packaging of eggs or egg products;

(G) The manufacturing of feed for poultry or livestock;

(H) The rotation of crops, including without limitation timber production;

(I) Commercial aquaculture;

(J) The application of existing, changed, or new technology, practices, processes, or procedures to any agricultural operation; and

(K) The operation of any roadside market.

(3.1) "Agricultural support facility" means any food processing plant or forest products processing plant together with all related or ancillary activities, including trucking; provided, however, that this term expressly excludes any rendering plant facility or operation.

(4) "Changed conditions" means any one or more of the following:

(A) Any change in the use of land in an agricultural area or in an industrial or commercial area affecting an agricultural support facility;

(B) An increase in the magnitude of an existing use of land in or around the locality of an agricultural facility or agricultural support facility and includes, but is not limited to, urban sprawl into an agricultural area or into an industrial or commercial area in or around the locality of such facility, or an increase in the number of persons making any such use, or an increase in the frequency of such use; or

(C) The construction or location of improvements on land in or around the locality of an agricultural facility or agricultural support facility closer to such facility than those improvements located on such land at the time of

commencement of the agricultural or agricultural support operation or the agricultural facility or agricultural support facility at issue and throughout the first year of operation of said facility.

(4.1) “Food processing plant” means a commercial operation that manufactures, packages, labels, distributes, or stores food for human consumption and does not provide food directly to a consumer.

(4.2) “Forest products processing plant” means a commercial operation that manufactures, packages, labels, distributes, or stores any forest product or that manufactures, packages, labels, distributes, or stores any building material made from gypsum rock.

(4.3) “Rendering plant” has the meaning provided by Code Section 4-4-40.

(5) “Urban sprawl” means either of the following or both:

(A) With regard to an agricultural area or agricultural operation:

(i) The conversion of agricultural areas from traditional agricultural use to residential use; or

(ii) An increase in the number of residences in an agricultural area which increase is unrelated to the use of the agricultural area for traditional agricultural purposes.

(B) With regard to an agricultural support facility:

(i) The conversion of industrial or commercial areas to residential use; or

(ii) An increase in the number of residences in an industrial or commercial area which increase is unrelated to the use of the industrial or commercial area for traditional industrial or commercial purposes.

(c) No agricultural facility, agricultural operation, any agricultural operation at an agricultural facility, agricultural support facility, or any operation at an agricultural support facility shall be or shall become a nuisance, either public or private, as a result of changed conditions in or around the locality of such facility or operation if the facility or operation has been in operation for one year or more. The provisions of this subsection shall not apply when a nuisance results from the negligent, improper, or illegal operation of any such facility or operation.

(d) For purposes of this Code section, the established date of operation is the date on which an agricultural operation or agricultural support facility commenced operation. If the physical facilities of the agricultural operation or the agricultural support facility are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation or agricultural support facility of a previously established date of operation.

Hawaii

HRS §§ 165-1 to 165-6

§ 165-1. Findings and purpose

The legislature finds that when nonagricultural land uses extend into agricultural areas, farming operations often become the subject of nuisance lawsuits that may result in the premature removal of lands from agricultural use and may discourage future investments in agriculture. The legislature also finds that under the Hawaii State Planning Act, it is a declared policy of this State to "foster attitudes and activities conducive to maintaining agriculture as a major sector of Hawaii's economy." Accordingly, it is the purpose of this chapter to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed to be a nuisance.

§ 165-2. Definitions

As used in this chapter, unless the context otherwise requires:

"Farming operation" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" includes but shall not be limited to:

(1) Agricultural-based commercial operations as described in section [205-2(d)(15)];

(2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;

(3) Operation of machinery and irrigation pumps;

(4) Ground and aerial seeding and spraying;

(5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and

(6) The employment and use of labor.

A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

"Nuisance" means any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare. "Nuisance" as used in this chapter, includes all claims that meet the requirements of this definition regardless of whether a complainant designates such claims as brought in nuisance, negligence, trespass, or any other area of law or

equity; provided that nuisance as used in this chapter does not include an alleged nuisance that involves water pollution or flooding.

[§ 165-3]. Declaration of public purpose
The preservation and promotion of farming is declared to be in the public purpose and deserving of public support.

§ 165-4. Right to farm
No court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices. There shall be a rebuttable presumption that a farming operation does not constitute a nuisance.

[§ 165-5]. Frivolous lawsuits
Any nuisance action, found to be frivolous by the court, in which a farming operation is alleged to be a nuisance as defined in section 165-2, shall be governed by section 607-14.5.

[§ 165-6]. Liberal construction
This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.

Idaho
Idaho Code §§ 22-4501 to 22-4504

Statutes and Constitution are current with effective legislation through the 2020 Second Regular and First Extraordinary Session of the 65th Idaho Legislature.

§ 22-4501. Legislative findings and intent

The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses, and in some cases prohibit investments in agricultural improvements. It is the intent of the legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho.

§ 22-4502. Definitions

As used in this chapter:

(1) "Agricultural facility" includes, without limitation, any land, building, structure, ditch, drain, pond, impoundment, appurtenance, machinery or equipment that is used in an agricultural operation.

(2) "Agricultural operation" means an activity or condition that occurs in connection with the production of agricultural products for food, fiber, fuel and other lawful uses, and includes, without limitation:

(A) Construction, expansion, use, maintenance and repair of an agricultural facility;

(B) preparing land for agricultural production;

(C) applying pesticides, herbicides or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil;

(D) planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticultural crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant byproducts, plant waste and plant compost;

(E) breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal byproducts, animal waste, animal compost, and bees, bee products and bee byproducts;

(F) processing and packaging agricultural products, including the processing and packaging of agricultural products into food and other agricultural commodities;

(G) manufacturing animal feed;

(H) transporting agricultural products to or from an agricultural facility;

(I) noise, odors, dust, fumes, light and other conditions associated with an agricultural operation or an agricultural facility;

(J) selling agricultural products at a farmers or roadside market;

(K) participating in a government sponsored agricultural program.

(3) "Nonagricultural activities," for the purposes of this chapter, means residential, commercial or industrial property development and use not associated with the production of agricultural products.

(4) “Improper or negligent operation” means that the agricultural operation is not undertaken in conformity with federal, state and local laws and regulations or permits, and adversely affects the public health and safety.

§ 22-4503. Agricultural operation, agricultural facility or expansion thereof not a nuisance; exception

No agricultural operation, agricultural facility or expansion thereof shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after it has been in operation for more than one (1) year, when the operation, facility or expansion was not a nuisance at the time it began or was constructed. The provisions of this section shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof.

§ 22-4504. Local ordinances

No city, county, taxing district or other political subdivision of this state shall adopt any ordinance or resolution that declares any agricultural operation, agricultural facility or expansion thereof that is operated in accordance with generally recognized agricultural practices to be a nuisance, nor shall any zoning ordinance that requires abatement as a nuisance or forces the closure of any such agricultural operation or agricultural facility be adopted. Any such ordinance or resolution shall be void and shall have no force or effect. Zoning and nuisance ordinances shall not apply to agricultural operations and agricultural facilities that were established outside the corporate limits of a municipality and then were incorporated into the municipality by annexation. The county planning and zoning

authority may adopt a nuisance waiver procedure to be recorded with the county recorder or appropriate county recording authority pursuant to residential divisions of property.

§ 22-4505. Nuisance actions

(a) An agricultural operation, agricultural facility or expansion thereof shall not be found to be a nuisance under the circumstances described in section 22-4503, Idaho Code.

(b) An agricultural operation, agricultural facility or expansion thereof that is operated in accordance with generally recognized agricultural practices or in compliance with a state or federally issued permit shall not be found to be a public or private nuisance. The provisions of this subsection shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof.

§ 22-4506. Severability

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Illinois
740 ILCS 70/1 to 70/5

70/1. Purpose

It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, farms often become the subject of nuisance suits. As a result, farms are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Act to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed to be a nuisance.

70/2. Farm defined

The term "farm" as used in this Act means any parcel of land used for the growing and harvesting of crops; for the feeding, breeding, keeping, and management of livestock; for dairying, horse keeping, or horse boarding or for any other agricultural or horticultural use or combination thereof.

70/3. Changed conditions; negligent operation

No farm or any of its appurtenances shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year, when such farm was not a nuisance at the time it began operation, provided, that the provisions of this Section shall not apply whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances.

70/4. Damages on account of pollution of, or change in condition of, waters

The provisions of Section 3 of this Act shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

70/4.5. Costs and fees.

In any nuisance action in which a farming operation is alleged to be a nuisance, a prevailing defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in the defense of the nuisance action, together with a reasonable amount for attorney fees. For the purposes of this Section, a prevailing defendant is a defendant in a lawsuit in whose favor a final court order or judgment is rendered. A defendant shall not be considered to have prevailed if, prior to a final court order or judgment, he or she enters into a negotiated settlement agreement or takes any corrective or other action that renders unnecessary a final court order or judgment.

70/5. Actions commenced prior to effective date

This Act does not affect actions commenced prior to the effective date of this Act.

Iowa
Iowa Code § 172D.1-172.D4, 352.1 to 352.12, 657.11 and 657.11A

Current with the legislation from the 2020 Regular Session.

Important Note: The Iowa Right to Farm statute has been found to be unconstitutional when applied in certain circumstances. It is important to review Iowa case law to determine the applicability of the Right to Farm statute in this state.

Coming to The Nuisance Defense

72D.1 Definitions

As used in this chapter, unless the context otherwise requires:

(1) "City" means a municipal corporation, but not including a county, township, school district, or any special-purpose district or authority.

(2) "Department" means the department of environmental quality in a reference to a time before July 1, 1983, the department of water, air and waste management in a reference to a time on or after July 1, 1983, and through June 30, 1986, and the department of natural resources on or after July 1, 1986, and includes any officer or agency within that department.

(3) "Established date of operation" means the date on which a feedlot commenced operating with not more livestock than reasonably could be maintained by the physical facilities existing as of that date. If the physical facilities of the feedlot are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of this date of

commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot of a previously established date of operation.

(4) "Established date of ownership" means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

(5) "Establishment cost of a feedlot" means the cost or value of the feedlot on its established date of operation and includes the cost or value of the building, machinery, vehicles, equipment or other real or personal property used in the operation of the feedlot.

(6) "Feedlot" means a lot, yard, corral, or other area in which livestock are confined, primarily for the purposes of feeding and growth prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

(7) A rule pertaining to "feedlot design standards" means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds in excess of two percent of the establishment cost of the feedlot.

(8) A rule pertaining to "feedlot management standards" means a rule, the implementation of which, or the compliance with which, requires the expenditure of funds not in excess of two percent of the establishment cost of the feedlot.

(9) "Livestock" means cattle, sheep, swine, ostriches, rheas, emus, poultry, and other animals or fowl, which are being produced primarily for use as food or food products for human consumption.

(10) "Materially affects" means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste, or similar products resulting

from the operation or the location or use of buildings, machinery, vehicles, equipment, or other real or personal property used in the operation, of a livestock feedlot.

(11) "Nuisance" means and includes public or private nuisance as defined either by statute or by the common law.

(12) "Nuisance action or proceeding" means and includes every action, claim or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

(13) "Owner" shall mean the person holding record title to real estate to include both legal and equitable interests under recorded real estate contracts.

(14) "Rule of the department" means a rule as defined in section 17A.2 which materially affects the operation of a feedlot and which has been adopted by the department. The term includes a rule which was in effect prior to July 1, 1975. Except as specifically provided in section 172D.3, subsection 2, paragraph "b", subparagraph (5) and paragraph "c", subparagraph (5) nothing in this chapter shall be deemed to empower the department to make any rule.

(15) "Zoning requirement" means a regulation or ordinance, which has been adopted by a city, county, township, school district, or any special-purpose district or authority, and which materially affects the operation of a feedlot. Nothing in this chapter shall be deemed to empower any agency described in this subsection to make any regulation or ordinance.

172D.2 Compliance; a defense to nuisance actions.

In any nuisance action or proceeding against a feedlot brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of

operation of that feedlot, proof of compliance with sections 172D.3 and 172D.4 shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section 172D.3 or 172D.4.

172D.3 Compliance with rules of the department.

(a) Requirement. A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection 2. A person complies with this section as a matter of law where no rule of the department exists.

(b) Applicability of rules.

(1) Exclusion for federally mandated requirements. This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimination system permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124.

(2) Applicability of rules of the department other than those relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(A) A rule of the department in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(B) A rule of the department shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(C) A rule of the department adopted after November 1, 1976, does not apply to a feedlot holding a wastewater permit from the department and having an established date of operation prior to the effective date of the rule until either the expiration of the term of

the permit in effect on the effective date of the rule, or ten years from the established date of operation of the feedlot, whichever time period is greater.

(D) A rule of the department adopted after November 1, 1976, does not apply to a feedlot not previously required to hold a wastewater permit from the department and having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or five years from the effective date of the rule, whichever time period is greater.

(E) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

(3) Applicability of rules of the department relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(A) A rule of the department under chapter 455B, division II, in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(B) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(C) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot management standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule until one year after the effective date of the rule.

(D) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot design standards adopted after November 1, 1976,

shall not apply to any feedlot having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or two years from the effective date of the rule, whichever time period is greater. However, any design standard rule pertaining to the siting of any feedlot shall apply only to a feedlot with an established date of operation subsequent to the effective date of the rule.

(E) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

Referred to in §172D.1, 172D.2

172D.4 Compliance with zoning requirements.

(a) Requirement. A person who operates a feedlot shall comply with applicable zoning requirements. The applicability of a zoning requirement shall be as provided in subsection 2 of this section. A person complies with this section as a matter of law where no zoning requirement exists.

(b) Applicability.

(1) A zoning requirement shall apply to a feedlot with an established date of operation subsequent to the effective date of the zoning requirement.

(2) A zoning requirement, other than one adopted by a city, shall not apply to a feedlot with an established date of operation prior to the effective date of the zoning requirement for a period of ten years from the effective date of that zoning requirement.

(3) A zoning requirement which is in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(4) A zoning requirement adopted by a city shall apply to a feedlot located within an incorporated or unincorporated area which is subject to regulation by that city as of November 1, 1976, regardless of the established date of operation of the feedlot.

(5) A zoning requirement adopted by a city shall not apply to a feedlot which becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation which takes effect after November 1, 1976 for a period of ten years from the effective date of the incorporation or annexation.

Agricultural Area Law

352.1. Purpose

(a) It is the intent of the general assembly and the policy of this state to provide for the orderly use and development of land and related natural resources in Iowa for residential, commercial, industrial, and recreational purposes, preserve private property rights, protect natural and historic resources and fragile ecosystems of this state including forests, wetlands, rivers, streams, lakes and their shorelines, aquifers, prairies, and recreational areas to promote the efficient use and conservation of energy resources, to promote the creation and maintenance of wildlife habitat, to consider the protection of soil from wind and water erosion and preserve the availability and use of agricultural land for agricultural production, through processes that emphasize the participation of citizens and local governments.

(b) The general assembly recognizes the importance of preserving the state's finite supply of agricultural land. Conversion of farmland to urban development, and other nonfarm uses, reduces future food production capabilities and may ultimately undermine agriculture as a major economic activity in Iowa.

(c) It is the intent of the general assembly to provide local citizens and local governments the means by which agricultural land may be protected from nonagricultural development pressures. This may be accomplished by the creation of county land preservation and use plans and policies, adoption of an agricultural land preservation ordinance, or establishment of agricultural areas in which substantial agricultural activities are encouraged, so that land inside these areas or subject to those ordinances is conserved for the production of food, fiber, and livestock, thus assuring the preservation of agriculture as a major factor in the economy of this state.

352.2. Definitions

As used in this chapter unless the context otherwise requires:

(1) "Agricultural area" means an area meeting the qualifications of section 352.6 and designated under section 352.7.

(2) "County board" means the county board of supervisors.

(3) "County commission" means the county land preservation and use commission.

(4) "Farm" means the land, buildings, and machinery used in the commercial production of farm products.

(5) "Farmland" means those parcels of land suitable for the production of farm products.

(6) "Farm operation" means a condition or activity which occurs on a farm in connection with the production of farm products and includes but is not limited to the raising, harvesting, drying, or storage of crops; the care or feeding of livestock; the handling or transportation of crops or livestock; the treatment or disposal of wastes

resulting from livestock; the marketing of products at roadside stands or farm markets; the creation of noise, odor, dust, or fumes; the operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(7) "Farm products" means those plants and animals and their products which are useful to people and includes but is not limited to forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, fruits, vegetables, flowers, seeds, grasses, trees, fish, honey, and other similar products, or any other plant, animal, or plant or animal product which supplies people with food, feed, fiber, or fur.

(8) "Livestock" means the same as defined in section 267.1.

(9) "Nuisance" means a public or private nuisance as defined either by statute, administrative rule, ordinance, or the common law.

(10) "Nuisance action or proceeding" means an action, claim, or proceeding, whether brought at law, in equity, or as an administrative proceeding, which is based on nuisance.

352.3. County land preservation and use commissions established

(a)(1) In each county a county land preservation and use commission is created composed of the following members:

(A) One member appointed by and from the county agricultural extension council.

(B) Two members appointed by the district soil and water conservation commissioners, one of whom must be a member of the district soil and water conservation board of commissioners and one must be a person who is not a commissioner, but is actively operating a farm in the county.

(C) One member appointed by the board of supervisors from the residents of the county who may be a member of the board.

(D) One member appointed by and from a convention of the mayors and councilpersons of the cities of the county. If a participating city contains fifty percent or more of the total population of the participating cities, that city may appoint the member appointed under this paragraph.

(2) However, if a city contains more than fifty percent of the population of a county which has a population exceeding fifty thousand persons, that city shall not participate in the convention of mayors and councilpersons and the members appointed under paragraph "a", subparagraph (4), shall be one member appointed by and from the mayor and councilpersons of that city and one member appointed by and from the convention of mayors and councilpersons and the member appointed under paragraph (a), subparagraph (3), shall be a resident of the county engaged in actual farming operations appointed by the board of supervisors.

(b) The county commission shall meet and organize by the election of a chairperson and vice chairperson from among its members by October 1, 1982. A majority of the members of the county commission constitutes a quorum. Concurrence of a quorum is required to determine any matter relating to its official duties.

(c) The state agricultural extension service shall provide county commissions with technical, informational, and clerical assistance.

(d) A vacancy in the county commission shall be filled in the same manner as the appointment of the member whose position is vacant. The term of a county commissioner is four years. However, in the initial appointments to the county commission, the members appointed under subsection 1, paragraph "a", subparagraphs (1) and (2) shall be appointed to terms of two years. Members may be appointed to succeed themselves.

352.4. County inventories

(a) Each county commission shall compile a county land use inventory of the unincorporated areas of the county by July 1, 1984. The county inventories shall where adequate data is available contain at least the following:

(1) The land available and used for agricultural purposes by soil suitability classifications or land capability classification, whichever is available.

(2) The lands used for public facilities, which may include parks, recreation areas, schools, government buildings, and historical sites.

(3) The lands used for private open spaces, which may include woodlands, wetlands, and water bodies.

(4) The land used for each of the following uses: commercial, industrial including mineral extraction, residential, and transportation.

(5) The lands which have been converted from agricultural use to residential use, commercial or industrial use, or public facilities since 1960.

(b) In addition to that provided under subsection 1, the county inventory shall also contain the land inside the boundaries of a city which is taxed as agricultural land.

(c) The information required by subsection 1 shall be provided both in narrative and map form. The county commission shall provide a cartographic display which contrasts the county's present land use with the land use in the county in 1960 based on the best available information. The display need only show the areas in agriculture, private open spaces, public facilities, commercial, industrial, residential, and transportation uses.

(d) The department of agriculture and land stewardship, department of management, department of natural resources, Iowa geological survey, state agricultural extension service, and the economic development authority shall, upon request, provide to each county commission any pertinent land use information available to assist in the compiling of the county land use inventories.

352.5. County land preservation and use plan

(a) By March 1, 1985, after at least one public hearing, a county commission shall propose to the county board a county land use plan for the unincorporated areas in the county, or it shall transmit to the county board the county land use inventory completed pursuant to section 352.4 together with a set of written findings on the following factors considered by the county commission:

(1) Methods of preserving agricultural lands for agricultural production.

(2) Methods of preserving and providing for recreational areas, forests, wetlands, streams, lakes and aquifers.

(3) Methods of providing for housing, commercial, industrial, transportational and recreational needs.

(4) Methods to promote the efficient use and conservation of energy resources.

(5) Methods to promote the creation and maintenance of wildlife habitat.

(6) Methods of implementing the plan, if adopted, including a formal countywide system to allow variances from the county plan that incorporates the examination of alternative land uses and a public hearing on such alternatives.

(7) Methods of encouraging the voluntary formation of agricultural areas by the owners of farmland.

(8) Methods of considering the platting of subdivisions and its effect upon the availability of farmland.

(b) Upon receipt of the inventory and findings, the county board may direct the county commission to prepare a county land use plan for the consideration of the county board.

(c)(1) Upon receipt of a plan, the county board may rerefer the plan to the county commission for modification, reject the plan or adopt the plan either as originally submitted or as modified.

(2) If the plan is approved by the county board, it shall be the land use policy of the county and shall be administered and enforced by the county in the unincorporated areas. The county commission shall review the county plan periodically for the purpose of considering amendments to it. If the commission proposes amendments to the plan, it shall forward the proposal to the county board which may rerefer the amendments to the commission for modification or reject or adopt the amendments.

(d) Within thirty days after the completion of the county land use inventory compiled pursuant to section 352.4 or any county land use plan or set of written findings completed

pursuant to this section, the county commission shall transmit one copy of each to the interagency resource council.

352.6. Creation or expansion of agricultural areas

(a) An owner of farmland may submit a proposal to the county board for the creation or expansion of an agricultural area within the county. An agricultural area, at its creation, shall include at least three hundred acres of farmland; however, a smaller area may be created if the farmland is adjacent to farmland subject to an agricultural land preservation ordinance pursuant to section 335.27 or adjacent to land located within an existing agricultural area. The proposal shall include a description of the proposed area to be created or expanded, including its boundaries. The territory shall be as compact and as nearly adjacent as feasible. Land shall not be included in an agricultural area without the consent of the owner. Agricultural areas shall not exist within the corporate limits of a city. The county board may consult with the department of natural resources when creating or expanding an agricultural area contiguous to a location which is under the direct supervision of the department, including a state park, state preserve, state recreation area, or sovereign lake. Agricultural areas may be created in a county which has adopted zoning ordinances. Except as provided in this section, the use of the land in agricultural areas is limited to farm operations.

(b) The following shall be permitted in an agricultural area:

(1) Residences constructed for occupation by a person engaged in farming or in a family farm operation. Nonconforming preexisting residences may be continued in residential use.

(2) Property of a telephone company, city utility as defined in section 390.1, public utility as defined in section 476.1, or pipeline company as defined in section 479.2.

(c) The county board of supervisors may permit any use not listed in subsection 2 in an agricultural area only if it finds all of the following:

(1) The use is not inconsistent with the purposes set forth in section 352.1.

(2) The use does not interfere seriously with farm operations within the area.

(3) The use does not materially alter the stability of the overall land use pattern in the area.

352.7. Duties of county board

(a) Within thirty days of receipt of a proposal to create or expand an agricultural area which meets the statutory requirements, the county board shall provide notice of the proposal by publishing notice in a newspaper of general circulation in the county. Within forty-five days after receipt of the proposal, the county board shall hold a public hearing on the proposal.

(b) Within sixty days after receipt, the county board shall adopt the proposal or any modification of the proposal it deems appropriate, unless to do so would be inconsistent with the purposes of this chapter.

352.8. Requirement that description of agricultural areas be filed with the county

Upon the creation or expansion of an agricultural area, its description shall be filed by the county board with the county auditor and placed on record with the recording officer in the county.

352.9. Withdrawal

(a) At any time after three years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a request for withdrawal containing a legal description of the land to be withdrawn and a statement of the reasons for the withdrawal. The county board shall, within sixty days of receipt of the request, approve or deny the request for withdrawal. At any time after six years from the date of creation of an agricultural area, an owner may withdraw from an agricultural area by filing with the county board a notice of withdrawal containing a legal description of the land to be withdrawn.

(b) The board shall cause the description of that agricultural area filed with the county auditor and recording officer in the county to be modified to reflect any withdrawal. Withdrawal shall be effective on the date of recording. The agricultural area from which the land is withdrawn shall continue in existence even if smaller than three hundred acres after withdrawal.

352.10. Limitation on power of certain public agencies to impose public benefit assessments or special assessments

A political subdivision or a benefited district providing public services such as sewer, water, or lights or for nonfarm drainage shall not impose benefit assessments or special assessments on land used primarily for agricultural production within an agricultural area on the basis of frontage, acreage, or value, unless the benefit assessments or special assessments were imposed prior to the formation of the agricultural area, or unless the service is provided to the landowner on the same basis as others having the service.

352.11. Incentives for agricultural land preservation; payment of costs and fees in nuisance actions

(a) Nuisance restriction.

(1) A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This paragraph shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area other than by withdrawal as provided in section 352.9.

(2) Paragraph "1" does not apply to a nuisance which is the result of a farm operation determined to be in violation of a federal statute or regulation or state statute or rule. Paragraph "1" does not apply if the nuisance results from the negligent operation of the farm or farm operation. Paragraph "1" does not apply to actions or proceedings arising from injury or damage to a person or property caused by the farm or a farm operation before the creation of the agricultural area. Paragraph "1" does not affect or defeat the right of a person to recover damages for an injury or damage sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land, unless the injury or damage is caused by an act of God.

(3) A person shall not bring an action or proceeding based on a claim of nuisance arising from a farm operation unless the person proceeds with mediation as provided in chapter 654B.

(4) If a defendant is a prevailing party in an action or proceeding based on a claim of nuisance and arising from a farm operation conducted on farmland within an agricultural area, the plaintiff shall pay court costs and reasonable attorney fees incurred by the defendant, if the court determines that the claim is frivolous.

(b) Water priority. In the application for a permit to divert, store, or withdraw water and in the allocation of available water resources under a water permit system, the department of natural resources shall give priority to the use of water resources by a farm or farm operation, exclusive of irrigation, located in an agricultural area over all other uses except the competing uses of water for ordinary household purposes.

352.12. State regulation

In order to accomplish the purposes set forth in section 352.1, a rule adopted by a state agency after July 1, 1982 which would restrict or regulate farms or farm operations may contain standards which are less restrictive for farms or farm operations inside an agricultural area than for farms or farm operations outside such an area. A rule containing such a discrimination shall not for the fact of such discrimination alone be found or held to be unreasonable, arbitrary, capricious, beyond the authority delegated to the agency, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Animal Feeding Operations Nuisance Defense

657.11. Animal feeding operations

(a) The purpose of this section is to protect animal agricultural producers who manage their operations according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal agricultural production. This section is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced

all competing interests and declares its intent to protect and preserve animal agricultural production operations.

(b) An animal feeding operation, as defined in section 459.102, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and the animal feeding operation shall not be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. However, this section shall not apply if the person bringing the action proves that an injury to the person or damage to the person's property is proximately caused by either of the following:

(1) The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

(2) Both of the following:

(A) The animal feeding operation unreasonably and for substantial periods of time interferes with the person's comfortable use and enjoyment of the person's life or property.

(B) The animal feeding operation failed to use existing prudent generally accepted management practices reasonable for the operation.

(c)(1) This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, “confinement feeding operation” means an animal feeding

operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

(2)(A) A person shall be classified as a chronic violator if the person has committed three or more violations as described in this subsection prior to, on, or after July 1, 1996. In addition, in relation to each violation, the person must have been subject to either of the following:

(i) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(ii) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

(B) Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under this subsection shall not be counted if the civil penalty ultimately imposed is less than three thousand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which

the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years.

(3) For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

(A) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.

(B) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.

(C) Failing to obtain a permit or approval by the department for a permit to construct or operate a confinement feeding operation or use a related animal feeding

operation structure or pollution control device or practice, for which the person must obtain a permit from the department.

(D) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(E) Failing to submit a manure management plan as required, or operating a confinement feeding operation required to have a manure management plan without having submitted the manure management plan.

(d) This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. A defense against a cause of action provided in this section includes but is not limited to a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

(e) If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person who may raise a defense under this section shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action.

(f) This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before May 21, 1998.

657.11A Animal agriculture; promotion of responsible animal feeding operations.

(a)(1) Findings. The general assembly finds that important public interests are advanced by preserving and encouraging the expansion of responsible animal agricultural production in this state which provides employment opportunities in and economic growth for rural Iowa, contributes tax revenues to the state and to local communities, and protects our valuable natural resources.

(2) Purpose. The purpose of this section is to encourage persons involved in animal agriculture to adopt existing prudent and generally utilized management practices for their animal feeding operations, thereby enhancing the fundamental role of animal agriculture in this state by providing a reasonable level of protection to persons engaged in animal agricultural production from certain types of nuisance actions.

(3) Declaration. The general assembly has balanced all competing interests and declares its intent to preserve and enhance responsible animal agricultural production, specifically animal agricultural producers in this state who use existing prudent and generally utilized management practices reasonable for their animal feeding operations.

(b) Except as otherwise provided by this section, an animal feeding operation, as defined in section 459.102, found to be a public or private nuisance under this chapter or under principles of common law, or found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action, shall be conclusively presumed to be a permanent nuisance and not a temporary or continuing nuisance under principles of common law, and shall be subject to compensatory damages only as provided in subsection c.

(c) Compensatory damages awarded to a person bringing an action alleging that an animal feeding operation is a public or private nuisance, or an interference with the

person's comfortable use and enjoyment of the person's life or property under any other cause of action, shall not exceed the following:

(1) The person's share of compensatory property damages due to any diminution in the fair market value of the person's real property proximately caused by the animal feeding operation. The fair market value of the real property is deemed to equal the price that a buyer who is willing but not compelled to buy and a seller who is willing but not compelled to sell would accept for the real property. The person's share of any compensatory property damages must be based on the person's share of the ownership interest in the real property. For purposes of this section, ownership interest means holding legal or equitable title to real property in fee simple, as a life estate, or as a leasehold interest.

(2) The person's compensatory damages due to the person's past, present, and future adverse health condition. This determination shall be made utilizing only objective and documented medical evidence that the nuisance or interference with the comfortable use and enjoyment of the person's life or property was the proximate cause of the person's adverse health condition.

(3) The person's compensatory special damages proximately caused by the animal feeding operation, including without limitation, annoyance and the loss of comfortable use and enjoyment of real property. However, the total damages awarded to a person under this paragraph "3" shall not exceed one and one-half times the sum of any damages awarded to the person for the person's share of the total compensatory property damages awarded under paragraph "1" plus any compensatory damages awarded to the person under paragraph "2".

(d) This section shall apply to an animal feeding operation in the same manner as section 657.11, subsections d and e.

(e) This section shall not apply if the person bringing the action proves that the public or private nuisance or interference with another person's comfortable use and enjoyment of the person's life or property under any other cause of action is proximately caused by any of the following:

(1) The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

(2) The failure to use existing prudent generally utilized management practices reasonable for the animal feeding operation.

Kansas
Kan. Stat. Ann. §§ 2-3201 to 2-3205

Statutes are current through laws enacted during the 2020 Regular and Special Sessions of the Kansas Legislature effective on or before July 1, 2020.

2-3201. Protection of farmland and agricultural activities; purpose

It is the declared policy of this state to conserve and protect and encourage the development and improvement of farmland for the production of food and other agricultural products. The legislature finds that agricultural activities conducted on farmland in areas in which nonagricultural uses have moved into agricultural areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses. It is therefore the purpose of this act to provide agricultural activities conducted on farmland protection from nuisance lawsuits.

2-3202. Certain agricultural activities not a nuisance

(a) Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding agricultural or nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance, public or private, unless the activity has a substantial adverse effect on the public health and safety.

(b) If such agricultural activity is undertaken in conformity with federal, state, and local laws and rules and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

(c) An owner of farmland who conducts agricultural activity protected pursuant to the provisions of this section:

(1) May reasonably expand the scope of such agricultural activity, including, but not limited to, increasing the acreage or number of animal units or changing agricultural activities, without losing such protection so long as such agricultural activity complies with all applicable local, state, and federal environmental codes, resolutions, laws and rules and regulations;

(2) may assign or transfer such protection to any successor in interest; and

(3) shall not be deemed to waive such protection by temporarily ceasing or decreasing the scope of such agricultural activity.

2-3203. Definitions

As used in this act:

(1) "Agricultural activity" means the growing or raising of horticultural and agricultural crops, hay, poultry and livestock, and livestock, poultry and dairy products for commercial purposes and includes activities related to the handling, storage and transportation of agricultural commodities.

(2) "Farmland" means land devoted primarily to an agricultural activity.

(3) "Person" means any individual, partnership, profit or nonprofit corporation, trust, organization or any other business entity, but does not include any governmental entity.

(4) "Agricultural chemical" means those agricultural chemicals as defined in the agricultural chemical act set forth in K.S.A. 2-2201 et seq., and amendments thereto.

2-3204. Action for injunction alleging misuse of chemicals; when attorney fees and expenses assessed

In any case in which an action for injunction is brought alleging the prior misuse of agricultural chemicals and the court finds that the defendant properly used the agricultural chemicals according to state and federal law and the label instructions and that the plaintiff sustained no damages from the use of such agricultural chemicals, the court may assess against the plaintiff reasonable attorney fees and expenses incurred by the defendant as a result of such action. In addition, the court may assess against the plaintiff additional losses and costs incurred by the defendant upon proof that such losses and costs were the result of an injunction granted as part of such action. Any assessment under this section shall be reduced (but not below zero) by an amount equal to the amount of any bond forfeited to the defendant under article 9 of chapter 60 of the Kansas Statutes Annotated. An assessment under this section shall be collected as costs in the action. This section shall be part of and supplemental to the provisions of article 32 of chapter 2 of the Kansas Statutes Annotated, and acts amendatory of the provisions thereof or supplemental thereto.

2-3205. Exclusive compensatory damages for nuisance originating from farmland used for agricultural activity; standing

(a) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from farmland primarily used for agricultural activity shall be as follows:

(1) If the nuisance is determined to be a permanent nuisance, compensatory damages shall be limited to the reduction in the fair market value of the claimant's property caused by such nuisance, not to exceed the fair market value of such claimant's property; and

(2) if the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the lesser of:

(A) The diminution in fair rental value of the claimant's property caused by such nuisance;

(B) the value of the loss of the use and enjoyment of the claimant's property; or

(C) the reasonable cost to repair or mitigate any injury to the claimant caused by such nuisance.

(b) If any claimant or claimant's successor in interest brings a subsequent nuisance claim against the same defendant or defendant's successors in interest for an alleged nuisance related to the same or a substantially similar agricultural activity, such claimant and claimant's successors in interest shall be limited to the compensatory damages for a permanent nuisance as provided in subsection (a)(1). Damages from any previous final court order or judgment against the defendant or defendant's successors in interest shall be considered in any subsequent case for the purposes of determining that the total amount of damages awarded shall not exceed the fair market value of such claimant's property.

(c) If a defendant in a private nuisance case where the nuisance is alleged to originate from farmland used for agricultural activity demonstrates a good faith effort to abate a condition that is determined to constitute a nuisance, and such good faith effort is unsuccessful, such nuisance shall be deemed to be not capable of abatement and compensatory damages shall be limited as provided in subsection (a)(1). Substantial compliance with a court order regarding such farmland shall constitute a good faith effort as a matter of law.

(d) No person shall have standing to bring an action for private nuisance pursuant to this section unless such person has an ownership interest in the property alleged to be affected by the nuisance.

(e) If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

(f) This section shall be part of and supplemental to article 32 of chapter 2 of the Kansas Statutes Annotated, and amendments thereto.

Kentucky
KRS § 413.072

413.072 Relationship of agricultural and silvicultural operations to law of nuisance and trespass; preemption of local ordinances; sustainable agriculture and best management practices

(1) It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land and silvicultural land for the production of food, timber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural and silvicultural areas, agricultural and silvicultural operations often become the subject of nuisance suits or legal actions restricting agricultural or silvicultural operations. As a result, agricultural and silvicultural operations are sometimes either curtailed or forced to cease operations. Investments in farm and timber improvements may be discouraged. It is the purpose of this section to reduce the loss to the state of its agricultural and silvicultural resources by clarifying the circumstances under which agricultural and silvicultural operations may be deemed to be a nuisance or interfered with by local ordinances or legal actions.

(2) No agricultural or silvicultural operation or any of its appurtenances shall be or become a nuisance or trespass, private or public, or be in violation of any zoning ordinance, or be subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices, by any changed conditions in or about the locality thereof after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began. The provisions of this subsection shall not apply whenever a nuisance, trespass, or zoning violation results from the negligent operation of an agricultural or silvicultural operation or its appurtenances.

(3) (a) For the purposes of this section, “agricultural operation” includes, but is not limited to, any facility for the production of crops, livestock, equine, poultry, livestock products, poultry products, horticultural products, and any generally accepted, reasonable, and prudent method for the operation of a farm to obtain a monetary profit

that complies with applicable laws and administrative regulations, and is performed in a reasonable and prudent manner customary among farm operators. Agricultural practices protected by this section shall include, but not be limited to, fertilizer application, the application of pesticides or herbicides that have been approved by public authority, planting, cultivating, mowing, harvesting, land clearing, and constructing farm buildings, roads, lakes, and ponds associated with a farming operation.

(b) 1. An agricultural operation may include the practice of sustainable agriculture.

2. For purposes of this section, "sustainable agriculture" includes science-based practices that:

a. Are supported by research and the use of technology;

b. Are demonstrated to lead to broad outcomes-based performance improvements that meet the needs of the present; and

c. Improve the ability of future generations to meet their needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities.

3. Sustainable agriculture may use continuous improvement principles, with goals that include:

a. Increasing agricultural productivity;

b. Improving human health through access to safe, nutritious, and affordable food; and

c. Enhancing agricultural and surrounding environments, including water, soil, and air quality, biodiversity, and habitat preservation.

(4) For the purposes of this section, "silvicultural operation" includes timber harvest, site preparation, slash disposal including controlled burning, tree planting, precommercial thinning, release, fertilization, animal damage control, reasonable water resource management, insect and disease control in forest land, and any other generally accepted, reasonable, and prudent practice normally employed in the management of the timber resource for monetary profit. A silvicultural operation inherently includes lengthy periods between harvests and shall be deemed continuously operating so long as the property supports an actual or developing forest.

(5) An agricultural or silvicultural operation shall not lose its status by reason of a change of ownership or a cessation of operation of no more than five (5) years or one (1) year after the expiration of a state or national program contract, either in whole or in part, nor shall it lose its status by reason of changes of crops or methods of production due to the introduction and use of new and generally accepted technologies which allow the operator to continue an existing agricultural or silvicultural corporation, unless the operation is substantially changed.
(6) The provisions of this section shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream or ground water of the person, firm, or corporation.

(7) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make an agricultural or silvicultural operation or its appurtenances a nuisance per se, or providing for abatement thereof as a nuisance, a trespass, or a zoning violation in the circumstance set forth in this section shall be void. However, the provisions of this subsection shall not apply whenever a nuisance results from the negligent operation of any such agricultural operation or any of its appurtenances.
(8) Any administrative regulation promulgated by any agency that establishes standards for harvesting or producing agricultural crops in a sustainable manner shall be based on the principles outlined in this section and shall allow the use of best management practices developed under KRS 224.71-100 to 224.71-140.

Louisiana
La. Rev. Stat. Ann. §§ 3:3601 to 3:3624

Current through the 2020 Regular Session

§ 3601. Citation; legislative findings; purpose

(a) This Part shall be known as and may be cited as the Louisiana Right to Farm Law.

(b)(1) The legislature hereby finds and declares that agriculture is essential not only to the economy of the state but to the sustenance of life, yet acreage devoted to agriculture has steadily declined in this century.

(2) The legislature further finds and declares that owners of agricultural land, including forest and timber land, and the public, which depends upon agricultural production, need to be protected from further diminution in value of agricultural land by providing safeguards and by establishing a more reliable remedy for diminution in value of agricultural land caused by governmental entities.

(3) The legislature also finds and declares that agricultural operations, including forest and timber operations, and the public, which depends upon agricultural production, need to be protected from any nuisance actions.

§ 3602. Definitions

As used in this Part, the following terms shall have the following meanings:

(1) "Agricultural activity" means a commercial enterprise of any agricultural related or associated entity.

(2) "Agricultural facility" means any facility used for the marketing, processing, or production of agricultural products, or for providing agricultural support services.

(3) "Agricultural land" means any land on which any agricultural operations is being conducted. Land which has qualified for a use value assessment under the provisions of R.S. 47:2301 et seq. shall be presumed to be agricultural land.

(4) "Agricultural marketing" means the marketing or handling of agricultural products.

(5) "Agricultural operation" means any agricultural facility or agricultural land which is being used for agricultural production or agricultural processing and includes any facility used for the production and processing of crops or products thereof, livestock or products thereof, farm-raised fish and fish products, wood, timber or forest products, fowl or plants for breeding or sales, and poultry or poultry products for commercial or industrial purposes. "Agricultural operation" also includes the use of farm machinery, equipment, devices, chemicals, products for agricultural use, materials and structures designed for agricultural use and used in accordance with traditional farm practices.

(6) "Agricultural processing" means the processing of any agricultural product and includes, but is not limited to, the slaughtering and processing of livestock and poultry, the elevation and drying of grain, the processing of sugar cane, and the ginning of cotton.

(7) "Agricultural product" means crops, livestock, poultry, and aquacultural, floracultural, horticultural, silvicultural, or viticultural products.

(8) "Agricultural production" means the commercial production of any agricultural products and includes the planting of cover crops, the leaving of land idle for the purpose of participating in government programs, normal crop or livestock rotation procedures, and the use of agricultural support services.

(9) "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides, lime, or other soil amendments; irrigation operations; or custom plowing, soil preparation or leveling, cultivation, or harvesting.

(10) "Diminution in value" means an existent reduction of twenty percent or more of the fair market value or the economically viable use of, as determined by a qualified appraisal expert, the affected portion of any parcel of private agricultural property or the property rights thereto for agricultural purposes, as a consequence of any regulation, rule, policy, or guideline promulgated for or by any governmental entity.

(11) "Established date of operation" means the date on which the agricultural operation, including forestry activities, commenced operation. If the physical facilities of the agricultural operation, including forestry activities, are subsequently expanded, then the established date of operation for each expansion shall be deemed to be a separate and independent "established date of operation" as of the date of commencement of the expanded operation. The commencement of the expanded operation shall not divest the agricultural operation of the previously established date of operation.

(12) "Generally accepted agricultural practices" are practices conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in a similar community or locale and under similar circumstances.

(13) "Governmental action" means annexation of territory by a governmental entity and the issuance of a rule, regulation, policy, or guideline promulgated for or by any governmental entity, or an order or other legally binding directive having the force of

law or capable of being enforced by government. Governmental action does not mean the following:

(A) A formal exercise of the power of eminent domain.

(B) The adoption, enactment, repeal, or amendment of a statute or resolution by the legislature.

(C) A governmental action directed or mandated by an order of a court of competent jurisdiction.

(D) Law enforcement activity involving the seizure or forfeiture of private agricultural property for a violation of law or as evidence in a criminal proceeding.

(E) An order issued as a result of a violation of law.

(F) Actions taken to enforce a mortgage or other valid security device.

(G) Actions taken in compliance with federal law or regulation.

(H) A result of police power to prohibit activities that are harmful to the public safety and health.

(14) "Governmental entity" means:

(A) A board, authority, commission, department, office, or agency of the state government.

(B) A local governmental subdivision with a population of less than four hundred twenty-five thousand.

(C) A special purpose district.

(15) "Owner" means a person owning an interest in private agricultural property at the time a governmental action becomes effective as to the private agricultural property in which the owner owns an interest.

(16) "Person" means any individual, partnership, corporation, association or other legal entity.

(17) "Private agricultural property" means bona fide agricultural or horticultural land that is assessed as such for parish ad valorem taxes as agricultural lands under homestead exemption that is wholly owned by a private citizen or citizens, or a privately or publicly held corporation, partnership, limited partnership, nonprofit corporation, or other legal entity and that is located outside the corporate limits of any municipality.

(18) "Traditional farm practices" means those accepted and customary standards established by similar agricultural operations under similar circumstances using established best management practices. Best management practices for animal feeding operations and confined animal feeding operations shall be determined by the Louisiana Department of Agriculture and Forestry in conjunction with the LSU AgCenter.

§ 3603. Right to Farm

(a) The legislature hereby declares that persons who are engaged in agricultural operations in accordance with generally accepted agricultural practices or traditional farm practices should be protected from legal actions brought by persons who subsequently acquire an interest in any land in the vicinity of the agricultural operation and from any nuisance action, public or private, against the agricultural production of an agricultural product or an agricultural operation including but not limited to, agricultural processing, and any agricultural activity involved, directly or indirectly, in the production of food for human consumption or for animal food.

(b) No agricultural operation shall be deemed to be a nuisance in any action brought under the provisions of Civil Code Article 669, R.S. 33:361, R.S. 40:14, or any other

grant of authority authorizing the suppression or regulation of public or private nuisances if the agricultural operation is conducted in accordance with generally accepted agricultural practices or traditional farm practices, and any one of the following applies:

(1) The person bringing the action acquired the interest in the land or improvements alleged to be affected by the nuisance after the date on which an agricultural operation was in existence.

(2) The agricultural operation was established prior to any change in the character of the property in the vicinity of the agricultural operation.

(3) The agricultural operation has existed for one year or more and the conditions or circumstances alleged to constitute a nuisance have existed substantially unchanged since the established date of operation.

(c) When an agricultural operation has been established, the protection from nuisance actions provided by this Section shall include the protection of similar agricultural operations engaged in as a result of the normal rotation of crops, or livestock, or both.

§ 3604. Presumption

Each person engaged in agricultural operations shall be presumed to be operating in accordance with generally accepted agricultural practices or traditional farm practices.

§ 3605. Frivolous lawsuits

If the court determines that any action alleging that an agricultural operation is a nuisance is frivolous, the court may award costs of court, reasonable attorney fees, and any other related costs to the defendant.

§ 3606. Negligence, intentional injury

The provisions of this Chapter shall not apply to actions based on negligence, intentional injury, or violation of state or federal law or rules.

§ 3607. Local ordinances

(a) No parish governing authority shall adopt any ordinance that declares any agricultural operation operated in accordance with generally accepted agricultural practices or traditional farm practices to be a nuisance or any zoning ordinance that forces the closure of any such agricultural operation.

(b) Municipal zoning and nuisance ordinances shall not apply to agricultural operations that were established outside the corporate limits of the municipality and that were incorporated into the municipality by annexation.

(c) The governing authorities of parishes and municipalities may adopt ordinances to prohibit or regulate agricultural operations that are negligently operated or that are not operated in accordance with generally accepted agricultural practices or traditional farm practices.

(d) The provisions of Subsection a of this Section shall not apply to Jefferson Parish.

§ 3608. Minimization of impact of governmental action

To minimize the impact of governmental action affecting private agricultural property and private agricultural property rights, a governmental entity shall:

(1) Avoid imposing an undue burden on the resources of that governmental entity by actions that require compensation of private agricultural property owners under the United States Constitution or the Constitution of Louisiana.

(2) Avoid diminution in value of private agricultural property which is used in agricultural production or which may potentially be used in agricultural production.

(3) Expedite a decision by the entity in cases in which a delay of the decision will substantially interfere with the use or value of private agricultural property rights affected by the provisions of this Part.

(4) Avoid unnecessary delays in compensating owners of private agricultural property when diminution in value occurs by governmental action.

§ 3609. Impact assessment

(a) A governmental entity shall prepare a written assessment of any proposed governmental action prior to taking any proposed action that will likely result in a diminution in value of private agricultural property.

(b) The written assessment shall include written analyses and conclusions concerning:

(1) A clear and specific identification of the governmental action and the purpose of the governmental action.

(2) Whether the governmental action would constitute a physical invasion or occupation of private agricultural property.

(3) The length of time that the governmental action would interfere with the use of private agricultural property.

(4) Whether the governmental action would result in a diminution in value as to the affected private agricultural property and, if so, the extent thereof.

(5) The extent to which the governmental action would interfere with the potential for agricultural development of the private property of owners.

(6) Whether the proposed governmental action restricts or prohibits a use which is already prohibited by existing law.

(7) Alternatives to the proposed action that would lessen or eliminate any adverse impact on private agricultural property.

(8) An estimate of the cost to the governmental entity if the entity is required to compensate one or more private agricultural property owners.

(9) The identity of the source of payment within the entity's budget or otherwise for any compensation that may be ordered.

(c) If there is an immediate threat to health and safety that constitutes an emergency, requires immediate governmental action, and prohibits the timely production of the assessment required in this Section, then the assessment shall be made at the earliest possible time after the governmental action is completed.

(d) The governmental entity preparing the assessment shall deliver copies to the governor, the commissioner of agriculture and forestry, and any affected landowners.

(e) The commissioner of agriculture and forestry shall promulgate guidelines for owners of private agricultural property and governmental entities to assist in determining what governmental actions are likely to result in a diminution of value of private agricultural property.

§ 3610. Private agricultural property owner's right of action; remedies

(a) An owner of private agricultural property may bring an action against a governmental entity to determine whether the governmental action caused a diminution in value of a parcel of private agricultural property in which the owner has an interest. The owner of the affected private agricultural property shall show that the diminution in value did not result from a restriction or prohibition of a use of the private agricultural property that was not a use already prohibited by law.

(b) An action brought under the provisions of this Section may be filed in the state court that has jurisdiction over the property and the owner shall be entitled to a trial by jury.

(c) Owners and governmental entities are encouraged to seek resolution of actions brought under this Section through mediation or any other mutually agreeable alternative dispute resolution method prior to the filing of any action. When a pending action has not been the subject of an attempted mediation, the court may require the parties to attempt mediation at any point in the proceedings prior to trial.

(d) In an action brought pursuant to this Section, upon a determination that a governmental action caused a diminution in value of private agricultural property, the owner shall, at the option of the owner, recover a sum equal to the diminution in value of the property and retain title thereto, or recover the entire fair market value of the property prior to the diminution in value of twenty percent or more and transfer title to the property to the governmental entity.

(e) The court in issuing any final order in any action brought pursuant to this Section may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing party in addition to other remedies provided by law.

(f) If a property owner prevails in a suit filed as provided in this Section, the governmental entity may rescind or repeal the rule or regulation which caused the diminution in value of the property, and if such rule or regulation is rescinded or repealed the governmental entity shall be liable for damages sustained by the property owner to his affected property which were caused by the application of the rescinded or repealed rule or regulation.

§ 3611. Determination of property value

In determining the assessed value of real agricultural property for ad valorem purposes, a governing authority shall reduce the assessment by the diminution in value as determined by the court or, in the absence of a court determination, by the appropriate assessing official. No such assessment shall be retroactive.

§ 3612. Restrictions and limitations

(a) Nothing in this Part shall restrict any other remedy or right that any person or class of persons may have under any other provision of law.

(b) Nothing in this Part shall limit or change any requirement of the Louisiana Administrative Procedure Act and the Louisiana Code of Civil Procedure.

(c) Nothing in this Part shall apply to any governmental action where the purpose of the said governmental action is the regulation of agriculture or the regulation of agricultural activity by a governmental entity charged with the responsibility of promotion, protection, and advancement of agriculture.

§ 3621. Citation; legislative findings; purpose

(a) This Part shall be known and may be cited as the Louisiana Right to Forest Law.

(b)(1) The legislature hereby finds and declares that forestry is an essential contribution to the economy of the state.

(2) The legislature further finds that the purpose of this Part is to allow owners of property classified as forest land to conduct activities relating to forest production or if a governmental entity prohibits or severely limits such activities, to compensate the owners for their losses.

§ 3622. Definitions

As used in this Part, the following terms shall have the following meanings:

(1) "Forest activities" means any activity on forest land associated with the reforesting, growing, managing, protecting, and harvesting of timber, wood, and forest products.

(2) "Forest land" means any land in the state devoted to the growing of trees or the commercial production of timber, wood, or forest products that is located outside the corporate limits of any municipality. Land which is assessed for a use value under the provisions of R.S. 47:2301 et seq. shall be presumed to be forest land.

(3) "Governmental action" means annexation of territory by a governmental entity or the issuance of a rule, regulation, policy, or guideline promulgated for or by any governmental entity, or an order or other legally binding directive having the force of law or capable of being enforced by government which prohibits or limits the right of an owner to conduct forestry activities on forestry land. Governmental action does not mean the following:

(A) A formal exercise of the power of eminent domain.

(B) A result of police power to prohibit activities that are harmful to the public safety and health.

(C) An order issued as a result of a violation of law.

(D) The adoption, enactment, repeal, or amendment of a statute or resolution by the legislature.

(E) A government action directed or mandated by an order of a court of competent jurisdiction.

(F) Law enforcement activity involving the seizure or forfeiture of private forest land for a violation of law or as evidence in a criminal proceeding.

(G) Action taken to enforce a mortgage or other valid security device.

(H) Actions taken in compliance with federal law or regulation.

(4) "Governmental entity" means:

(A) A board, authority, commission, department, office, or agency of the state government.

(B) A local governmental subdivision with a population of less than four hundred twenty-five thousand.

(C) A special purpose district.

(5) "Owner" means a person owning an interest in forest land at the time a governmental action becomes effective as to the forest land in which the owner owns an interest.

(6) "Prohibits or limits" means an existent reduction of twenty percent or more of the fair market value of forest land, or any portion thereof, or property rights thereto associated with conducting forestry activities on forest land before the action.

§ 3622.1. Impact assessment

(a) A governmental entity shall prepare a written assessment of any proposed governmental action prior to taking any proposed action that will likely result in a diminution in value of forest land.

(b)The written assessment shall include written analyses and conclusions concerning:

(1) A clear and specific identification of the governmental action and the purpose of the governmental action.

(2) Whether the governmental action would constitute a physical invasion or occupation of forest land.

(3) The length of time that the governmental action would interfere with the use of forest land.

(4) Whether the governmental action would result in a diminution in value as to the affected forest land and, if so, the extent thereof.

(5) The extent to which the governmental action would interfere with the potential for forestry development of the property of owners.

(6) Whether the proposed governmental action restricts or prohibits a use which is already prohibited by existing law.

(7) Alternatives to the proposed action that would lessen or eliminate any adverse impact on forest land.

(8) An estimate of the cost to the governmental entity if the entity is required to compensate one or more forest landowners.

(9) The identity of the source of payment within the entity's budget or otherwise for any compensation that may be ordered.

(c) If there is an immediate threat to health and safety that constitutes an emergency, requires immediate governmental action, and prohibits the timely production of the assessment required in this Section, then the assessment shall be made at the earliest possible time after the governmental action is completed.

(d) The governmental entity preparing the assessment shall deliver copies to the governor and the commissioner of agriculture and forestry, and any affected landowners.

§ 3623. Landowner's right of action; remedies

(a) An owner of forest land shall have a cause of action against a governmental entity for damages resulting from governmental action which prohibits or limits an owner's ability to conduct forestry activities on forest land in which the owner has an interest.

(b) An action brought under the provisions of this Section may be filed in the district court that has jurisdiction over the property and the owner shall be entitled to a trial by jury, provided that the requirements of R.S. 13:5105 are met.

(c) In an action brought pursuant to this Section and subject to the provisions of R.S. 13:5105 et seq., upon a determination that a governmental action caused a diminution in value of forest land resulting in prohibition or limit of use in violation of this Part, the owner shall recover a sum equal to the diminution in value of the property and retain title thereto.

(d) The court in issuing any final order in any action brought pursuant to this Section may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing party in addition to other remedies provided by law.

(e) A subsequent repeal or rescission by the governmental entity of the governmental action, which is the subject of a suit, shall not preclude the owner of the right to recover damages resulting from such action and in the discretion of the court, reasonable attorney and expert witness fees.

§ 3624. Restrictions and limitations

Nothing in this Part shall restrict any other remedy or right that any person or class of persons may have under any other provision of law.

Maine
Me. Rev. Stat. Ann. tit. 7 §§ 151 to 163

Current with legislation through the 2019 Second Regular Session of the 129th Legislature. The Second Regular Session convened January 8, 2020 and adjourned sine die March 17, 2020.

§ 151. Short title

This Act may be known and cited as "the Maine Agriculture Protection Act."

§ 152. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

(1) Agricultural composting operation. "Agricultural composting operation" means composting that takes place on a farm. "Agricultural composting operation" does not include an operation that involves nonorganic municipal solid waste or that composts municipal sludge, septage, industrial solid waste or industrial sludge. "Agricultural composting operation" does not include an operation that composts materials with a moderate or high risk of contamination from heavy metals, volatile and semivolatile organic compounds, polychlorinated biphenyls or dioxin.

(2) Agricultural products. "Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products, manure and compost and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber

or fur. "Agricultural products" does not include trees grown and harvested for forest products.

(3) Agricultural support services. "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting.

(4) Composting. "Composting" means the controlled aerobic decomposition of organic materials to produce a soil-like product beneficial to plant growth and suitable for agronomic use.

(5) Farm. "Farm" means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products.

(6) Farm operation. "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of agricultural products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects and fumes; operation of machinery and irrigation pumps; disposal of manure; agricultural support services; and the employment and use of labor.

§ 153. Farm; farm operation or agricultural composting operation not a nuisance

A farm, farm operation or agricultural composting operation may not be considered a public or private nuisance under Title 17, chapter 91 if the farm, farm operation or agricultural composting operation alleged to be a nuisance is in compliance with applicable state and federal laws, rules and regulations and:

(1) Farm; farm operation; agricultural composting operation. The farm, farm operation or agricultural composting operation conforms to best management practices, as determined by the commissioner in accordance with Title 5, chapter 375;

(2) storage or use of farm nutrients; complaints. For complaints regarding the storage or use of farm nutrients as defined in section 4201, subsection 4, the farm, farm operation or agricultural composting operation has implemented a nutrient management plan developed in accordance with section 4204 and operation of the farm, farm operation or agricultural composting operation is consistent with the nutrient management plan; or

(3) change in land use; occupancy of land. The farm, farm operation or agricultural composting operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation as long as, before the change in land use or occupancy, the farm, farm operation or agricultural composting operation would not have been considered a nuisance. This subsection does not apply to a farm, farm operation or agricultural composting operation that materially changes the conditions or nature of the farm, farm operation or agricultural composting operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation. Nothing in this subsection affects the applicability of any of the other provisions of this chapter.

§ 154. Violation of municipal ordinances

A farm operation or agricultural composting operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the farm operation or agricultural composting operation conforms to best management practices as determined by the commissioner in accordance with section 153, subsection 1.

§ 155. Application; municipal ordinances

This chapter does not affect the application of state and federal laws. A municipality must provide the commissioner with a copy of any proposed ordinance that affects farm operations or agricultural composting operations. The clerk of the municipality or a municipal official designated by the clerk shall submit a copy of the proposed ordinance to the commissioner at least 90 days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The commissioner shall review the proposed ordinance and advise the municipality as to whether the proposed ordinance restricts or prohibits the use of best management practices. This section does not affect municipal authority to enact ordinances.

§ 156. Complaint resolution

The commissioner shall investigate all complaints involving a farm, farm operation or agricultural composting operation, including, but not limited to, complaints involving the use of waste products, groundwater and surface water pollution and insect infestations. In cases of insect infestations not arising from agricultural activities, when the State Entomologist believes that the infestation is a public nuisance and is able to identify the source or sources of the infestation, the commissioner shall refer the matter to the Department of the Attorney General. If the commissioner finds upon investigation that the person responsible for the farm, farm operation or agricultural composting operation is using best management practices, the commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding section 153, subsection 3, if the commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than best management practices, the commissioner shall:

(1) Changes. Determine the changes needed in the farm, farm operation or agricultural composting operation to comply with best management practices and prescribe site- specific best management practices for that farm, farm operation or agricultural composting operation;

(2) advise person responsible. Advise the person responsible for the farm, farm operation or agricultural composting operation of the changes, as determined in subsection 1, that are necessary to conform with best management practices and determine subsequently if those changes are implemented; and

(3) findings. Give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.

§ 157. Good faith

The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm, farm operation or agricultural composting operation in which it is alleged that the farm, farm operation or agricultural composting operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.

§ 158. Failure to adopt best management practices

If the person responsible for a farm, farm operation or agricultural composting operation does not apply best management practices as required by the commissioner, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this chapter or any other

applicable state law, and the court may order the abatement with costs as provided under Title 17, section 2702, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this chapter constitutes a separate civil violation for which a fine of up to $1,000, together with an additional fine of up to $250 per day for every day that the violation continues, may be adjudged.

§ 159. Agricultural Complaint Response Fund

There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept from any source funds designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm, farm operation or agricultural composting operation and to abate conditions potentially resulting from farms, farm operations or agricultural composting operations.

§ 160. Educational outreach

The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the best management practices of the department. The commissioner shall inform the public about the provisions of this chapter, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources.

§ 161. Rules

The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 162. Maine Farm Agricultural Resource Management and Sustainability recognition program

(a) The commissioner shall establish a process for designating Maine Farm Agricultural Resource Management and Sustainability recipients according to this section. This designation provides farmers an opportunity to recognize their commitment to sustainable agricultural practices and long-term resource management and to increase public awareness of agricultural producer commitment to best management practices.

(1) Application. An applicant for designation as a Maine Farm Agricultural Resource Management and Sustainability recipient shall submit a completed application for verification in accordance with subsection 3 to the department. The department shall develop an application and make it available through the offices of the soil and water conservation districts and private organizations and public agencies that support or represent farmers in the State.

(2) Eligibility. A farm is eligible for designation under this section if it engages in the management of cropland or the production of livestock, specialty crops or value-added products and meets the criteria established by the commissioner as follows:

(A) The farm consists of land classified as prime farmland, land of statewide or local importance or unique farmland by the Natural Resources Conservation Service within the United States Department of Agriculture. In counties where land of local

importance has not been identified, land that is actively farmed may be eligible as provided in rules adopted under subsection 4;

(B) the farm is engaged in the commercial production of agricultural products; or

(C) the farm complies with additional criteria established in rules adopted under subsection 4.

(b) A farm that is farmed under a lease may be designated as long as the landowner and the lessee sign the application.

(3) Verification of eligibility. An applicant for designation as a Maine Farm Agricultural Resource Management and Sustainability recipient shall submit a completed application form together with support materials as required in rules adopted under subsection 4 to the department for verification of eligibility.

(4) The commissioner may adopt rules to further define the verification process under subsection 3 and establish additional eligibility criteria as needed for designation of Maine Farm Agricultural Resource Management and Sustainability recipients. The commissioner may provide signs or certificates or develop other means of recognizing a farm that has attained designation as a Maine Farm Agricultural Resource Management and Sustainability recipient. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(5) Fee. The commissioner may charge fees as necessary for the administration of this section.

§ 163. Pilot program for establishing agricultural districts and agriculture enhancement groups

(a) The commissioner may establish a pilot program to examine the effectiveness of agricultural districts in keeping farmland in agricultural production and enhancing the profitability of farming. For the purposes of this section, "pilot program" means an agricultural districts program that allows farmers to propose that the department designate their farmland as an agricultural district where commercial agriculture is encouraged and farmland protected through collaborative efforts at the state and local level.

(1) Eligibility criteria for agricultural districts. In order to be eligible to participate in the pilot program, farms must form agricultural districts. An agricultural district must be composed of 3 or more farms that are located in geographic proximity to each other, produce similar types of agricultural products or share common marketing interests. The commissioner shall review eligibility criteria for participants in agricultural districts in other states and may develop additional criteria for participation with the pilot program, including, but not limited to, minimum acreage and farm income thresholds.

(2) Benefits. The commissioner shall review benefits accruing to participants in agricultural districts in other states. Prior to initiating the pilot program, the commissioner shall develop a description of potential benefits accruing to participants in a pilot program. Potential benefits may include, but are not limited to, scoring bonuses for competitive grants, loans or business assistance programs and for project proposals screened for submission to the Land for Maine's Future Fund under Title 5, section 6203. The commissioner shall consult with other agencies administering programs affected by the proposed benefits.

(3) Selection of regions. The commissioner shall distribute a description of the purpose and potential benefits of forming an agricultural district. Distribution may be through public agencies and private organizations that have regular contact with farmers in the State. The description must be posted on the department's publicly accessible website. The description notice must include information on how to contact the department to express interest in learning more about or participating in an agricultural district.

(b) Based on the response to the initial solicitation, the commissioner may designate one or more districts. Prior to making a selection, the commissioner shall communicate with local or regional planning commissions and state, local or regional land trusts to ascertain their willingness to participate in efforts to protect farmland in the proposed districts.

(c) If more than one district is designated for the pilot program, the commissioner shall strive to select districts in different parts of the State or different sectors of the State's agricultural economy.

Maryland
Md. Code Ann., Cts. & Jud. Proc. § 5-403

Current through all legislation from the 2020 Regular Session of the General Assembly.

§ 5-403. Agricultural or silvicultural operations

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Agricultural operation" means an operation for the processing of agricultural crops or on-farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer.

(3)(A) "Commercial fishing or seafood operation" means an operation for the harvesting, storage, processing, marketing, sale, purchase, trade, or transport of any seafood product.

(B) "Commercial fishing or seafood operation" includes the delivery, storage, and maintenance of equipment and supplies and charter boat fishing and related arrival and departure activities, equipment, and supplies.

(4) Notwithstanding § 5-101 of the Natural Resources Article, "silvicultural operation" means implementation of forestry practices, including the establishment, composition, growth, and harvesting of trees.

Enforcement of health, environmental, zoning, or other laws

(b)(1) This section does not:

(A) Prohibit a federal, State, or local government from enforcing health, environmental, zoning, or any other applicable law;

(B) relieve any agricultural, silvicultural, or commercial fishing or seafood operation from the responsibility of complying with the terms of any applicable federal, State, and local permit required for the operation;

(C) relieve any agricultural, silvicultural, or commercial fishing or seafood operator from the responsibility to comply with any federal, State, or local health, environmental, and zoning requirement; or

(D) relieve any agricultural, silvicultural, or commercial fishing or seafood operation from liability for conducting an agricultural or a commercial fishing or seafood operation in a negligent manner.

(2) This section does not apply to:

(A) Any agricultural operation that is operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law; or

(B) any commercial fishing or seafood operation that is not in compliance with applicable federal, State, and local laws.

Operations in compliance with permit requirements

(c) If an agricultural, a silvicultural, or a commercial fishing or seafood operation has been under way for a period of 1 year or more and if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and is not conducted in a negligent manner:

(1) The operation, including any sight, noise, odors, dust, or insects resulting from the operation, may not be deemed to be a public or private nuisance; and

(2) a private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property, whether public or private.

Construction of section

(d)(1) This section does not create, and may not be construed as creating, a new cause of action or substantive legal right against a person who is engaged in an agricultural, a silvicultural, or a commercial fishing or seafood operation.

(2) This section does not affect, and may not be construed as affecting, any defenses available at common law to a defendant who is engaged in an agricultural, a silvicultural, or a commercial fishing or seafood operation and subject to an action for nuisance.

Prerequisites to nuisance actions

(e)(1) This subsection does not apply to an action brought by a government agency.

(2) If a local agency is authorized to hear a nuisance complaint against an agricultural or a commercial fishing or seafood operation, a person may not bring a nuisance action against an agricultural or a commercial fishing or seafood operation in any court until:

(A) The person has filed a complaint with the local agency; and

(B) the local agency has made a decision or recommendation on the complaint.

(3) A decision of a local agency on a nuisance complaint against a commercial fishing or seafood operation may be appealed to a circuit court in accordance with Title 7, Chapter 200 of the Maryland Rules.

(4) If there is no local agency authorized to hear a nuisance complaint against an agricultural operation, a person may not bring a nuisance action against an agricultural operation in any court until:

(A) The person has referred a complaint to the State Agricultural Mediation Program in the Department of Agriculture under Title 1, Subtitle 1A of the Agriculture Article; and

(B) the Department certifies that mediation has been concluded.

Massachusetts
Mass Gen. Laws ch. 40A, § 3; Mass. Gen. Laws ch. 111, § 125A; Mass. Gen. Laws ch. 128, § 1A; Mass. Gen. Laws ch. 243, § 6

Current through Chapter 113 of the 2020 Second Annual Session of the General Court.

Ch. 40A, § 3. Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences

(a) No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture,

floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least $1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof; provided, however, that the terms agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution or dispensation of marijuana as defined in section 2 of chapter 369 of the acts of 2012, marihuana as defined in section 1 of chapter 94C or marijuana or marihuana as defined in section 1 of chapter 94G; and provided further, that nothing in this section shall preclude a municipality from establishing zoning by-laws or ordinances which allow commercial marijuana growing and cultivation on land used for commercial agriculture, aquaculture, floriculture, or horticulture. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

(b) No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit,

regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. For the purpose of this section, the petition of a public service corporation relating to siting of a communications or cable television facility shall be filed with the department of telecommunications and cable. All other petitions shall be filed with the department of public utilities.

(c) No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

(d) Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

(e) Family child care home and large family child care home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.

(f) No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.

(g) No zoning ordinance or by-law shall prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a manufactured home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such manufactured home shall be subject to the provisions of the state sanitary code.

(h) No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in section thirteen A of chapter twenty-two.

(i) No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

(j) No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by- laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

Ch. 111, § 125A. Review of order adjudging the operation of a farm to be a nuisance

(a) If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five shall, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.

(b) In the case of any such nuisance a written notice of an order to abate the same within ten days after receipt of such notice shall first be given as provided in section one hundred and twenty-four. If no petition for review is filed as herein provided, or upon final order of the court, said board may then proceed as provided in said sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five, or in the order of the court. If the owner or operator of said farm within said ten days shall file a petition for a review of such order in the district court for the district in which the farm lies, the operation of said order shall be suspended, pending the order of the court. Upon the filing of such petition the court shall give notice thereof to said board, shall hear all pertinent evidence and determine the facts, and upon the facts as so determined review said order and affirm, annul, alter or modify the same as justice may

require. The parties shall have the same rights of appeal on questions of law as in other civil cases in the district courts.

Ch. 128, § 1A. Farming, agriculture, farmer; definitions

"Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur- bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

Ch. 243, § 6. Actions against farming operations; limitations

No action in nuisance may be maintained against any person or entity resulting from the operation of a farm or any ancillary or related activities thereof, if said operation is an ordinary aspect of said farming operation or ancillary or related activity; provided, however, that said farm shall have been in operation for more than one year. This section shall not apply if the nuisance is determined to exist as the result of negligent conduct or actions inconsistent with generally accepted agricultural practices. For the purposes of this section, "agriculture" and "farming" shall be as defined in section one A of chapter one hundred and twenty-eight.

Michigan
Mich. Comp. Laws § 286.471 to 286.474

The statutes are current through P.A.2020, No. 249, of the 2020 Regular Session, 100th Legislature.

286.471. Short title

This act shall be known and may be cited as the "Michigan right to farm act".

286.472. Definitions

As used in this act:

(1) "Farm" means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

(2) "Farm operation" means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

(A) Marketing produce at roadside stands or farm markets.

(B) The generation of noise, odors, dust, fumes, and other associated conditions.

(C) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(D) Field preparation and ground and aerial seeding and spraying.

(E) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.

(F) Use of alternative pest management techniques.

(G) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.

(H) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.

(I) The conversion from a farm operation activity to other farm operation activities.

(J) The employment and use of labor.

(3) "Farm product" means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture.

(4) "Generally accepted agricultural and management practices" means those practices as defined by the Michigan commission of agriculture. The commission shall give due consideration to available Michigan department of agriculture information and written recommendations from the Michigan state university college of agriculture and

natural resources extension and the agricultural experiment station in cooperation with the United States department of agriculture natural resources conservation service and the consolidated farm service agency, the Michigan department of natural resources, and other professional and industry organizations.

(5) "Person" means an individual, corporation, partnership, association, or other legal entity.

286.473. Circumstances under which farms or farm operation are not public or private nuisances

(a) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. Generally accepted agricultural and management practices shall be reviewed annually by the Michigan commission of agriculture and revised as considered necessary.

(b) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

(c) A farm or farm operation that is in conformance with subsection (a) shall not be found to be a public or private nuisance as a result of any of the following:

(1) A change in ownership or size.

(2) Temporary cessation or interruption of farming.

(3) Enrollment in governmental programs.

(4) Adoption of new technology.

(5) A change in type of farm product being produced.

286.473b. Nuisance actions, costs

In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the farm or farm operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees.

286.473c. Disclosures by sellers

(a) Certain real property is subject to those disclosures described in section 7 of the seller disclosure act, Act No. 92 of the Public Acts of 1993, being section 565.957 of the Michigan Compiled Laws. A seller of real property located within 1 mile of the property boundary of a farm or farm operation may voluntarily make available to the buyer the following statement: “This notice is to inform prospective residents that the real property they are about to acquire lies within 1 mile of the property boundary of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan right to farm act.”.

(b) Certain subdivided land is subject to those disclosures described in section 8 of the land sales act, Act No. 286 of the Public Acts of 1972, being section 565.808 of the Michigan Compiled Laws.

286.474. Investigation and resolution of complaints; findings; unverified complaints; enactment of ordinances

(a) Subject to subsection (b), the director shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of manure and other nutrients, agricultural waste products, dust, noise, odor, fumes, air pollution, surface water or groundwater pollution, food and agricultural processing by-products, care of farm animals, and pest infestations. Within 7 business days of receipt of the complaint, the director shall conduct an on-site inspection of the farm or farm operation. The director shall notify, in writing, the city, village, or township and the county in which the farm or farm operation is located of the complaint.

(b) The commission and the director shall enter into a memorandum of understanding with the director of the department of environmental quality. The investigation and resolution of environmental complaints concerning farms or farm operations must be conducted in accordance with the memorandum of understanding. However, the director shall notify the department of environmental quality of any potential violation of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, or a rule promulgated under that act. Activities at a farm or farm operation are subject to applicable provisions of the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, and the rules promulgated under that act. The commission and the director shall develop procedures for the investigation and resolution for other farm-related complaints.

(c) If the director finds upon investigation under subsection (a) that the person responsible for a farm or farm operation is using generally accepted agricultural and

management practices, the director shall notify, in writing, that person, the complainant, and the city, village, or township and the county in which the farm or farm operation is located of this finding. If the director identifies that the source or potential sources of the problem were caused by the use of other than generally accepted agricultural and management practices, the director shall advise the person responsible for the farm or farm operation that necessary changes should be made to resolve or abate the problem and to conform with generally accepted agricultural and management practices and that if those changes cannot be implemented within 30 days, the person responsible for the farm or farm operation shall submit to the director an implementation plan including a schedule for completion of the necessary changes. When the director conducts a follow-up on-site inspection to verify whether those changes have been implemented, the director shall notify, in writing, the city, village, or township and the county in which the farm or farm operation is located of the time and date of the follow-up on-site inspection and shall allow a representative of the city, village, or township and the county to be present during the follow- up on-site inspection. If the changes have been implemented, the director shall notify, in writing, the person responsible for the farm or farm operation, the complainant, and the city, village, or township and the county in which the farm or farm operation is located of this determination. If the changes have not been implemented, the director shall notify, in writing, the complainant and the city, village, or township and the county in which the farm or farm operation is located that the changes have not been implemented and whether a plan for implementation has been submitted. Upon request, the director shall provide a copy of the implementation plan to the city, village, or township and the county in which the farm or farm operation is located.

(d) A complainant who brings more than 3 unverified complaints against the same farm or farm operation within 3 years may be ordered, by the director, to pay to the department the full costs of investigation of any fourth or subsequent unverified complaint against the same farm or farm operation. As used in this subsection, "unverified complaint" means a complaint in response to which the director determines that the farm or farm operation is using generally accepted agricultural and management practices.

(e) Except as provided in subsection (f), this act does not affect the application of state statutes and federal statutes.

(f) Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act.

(g) A local unit of government may submit to the director a proposed ordinance prescribing standards different from those contained in generally accepted agricultural and management practices if adverse effects on the environment or public health will exist within the local unit of government. A proposed ordinance under this subsection must not conflict with existing state laws or federal laws. At least 45 days prior to enactment of the proposed ordinance, the local unit of government shall submit a copy of

the proposed ordinance to the director. Upon receipt of the proposed ordinance, the director shall hold a public meeting in that local unit of government to review the proposed ordinance. In conducting its review, the director shall consult with the departments of environmental quality and health and human services and shall consider any recommendations of the county health department of the county where the adverse effects on the environment or public health will allegedly exist. Within 30 days after the public meeting, the director shall make a recommendation to the commission on whether the ordinance should be approved. An ordinance enacted under this subsection must not be enforced by a local unit of government until approved by the commission.

(h) By May 1, 2000, the commission shall issue proposed generally accepted agricultural and management practices for site selection and odor controls at new and expanding animal livestock facilities. The commission shall adopt such generally accepted agricultural and management practices by June 1, 2000. In developing these generally accepted agricultural and management practices, the commission shall do both of the following:

(1) Establish an advisory committee to provide recommendations to the commission. The advisory committee must include the entities listed in section 2(d),1 2 individuals representing townships, 1 individual representing counties, and 2 individuals representing agricultural industry organizations.

(2) For the generally accepted agricultural and management practices for site selection, consider groundwater protection, soil permeability, and other factors determined necessary or appropriate by the commission.

(i) If generally accepted agricultural and management practices require the person responsible for the operation of a farm or farm operation to prepare a manure management plan, the person responsible for the operation of the farm or farm operation shall provide a copy of that manure management plan to the city, village, or township or the county in which the farm or farm operation is located, upon request. A manure management plan provided under this subsection is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(j) The department shall do both of the following:

(1) Make available on the department's website current generally accepted agricultural and management practices.

(2) Establish a toll-free telephone number for receipt of information on noncompliance with generally accepted agricultural and management practices.

(k) As used in this section:

(1) "Adverse effects on the environment or public health" means any unreasonable risk to human beings or the environment, based on scientific evidence and taking into account the economic, social, and environmental costs and benefits and specific populations whose health may be adversely affected.

(2) "Commission" means the commission of agriculture and rural development.

(3) "Department" means the department of agriculture and rural development.

(4) "Director" means the director of the department or his or her designee.

Minnesota
Minn. Stat. § 561.19

Current with all legislation from the 2020 Regular Session and 1st through 5th Special Sessions.

561.19. Nuisance liability of agricultural operations

Subdivision 1. Definitions.

For the purposes of this section, the following terms have the meanings given them:

(1) "Agricultural operation" means a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.

(2) "Established date of operation" means the date on which the agricultural operation commenced. If the agricultural operation is subsequently expanded or significantly altered, the established date of operation for each expansion or alteration is deemed to be the date of commencement of the expanded or altered operation. As used in this paragraph, "expanded" means an expansion by at least 25 percent in the number of a particular kind of animal or livestock located on an agricultural operation.

"Significantly altered" does not mean:

(A) A transfer of an ownership interest to and held by persons or the spouses of persons related to each other within the third degree of kindred according to the rules of civil law to the person making the transfer so long as at least one of the related persons is actively operating the farm, or to a family farm trust under section 500.24;

(B) temporary cessation or interruption of cropping activities;

(C) adoption of new technologies; or

(D) a change in the crop product produced.

(3) "Generally accepted agricultural practices" means those practices commonly used by other farmers in the county or a contiguous county in which a nuisance claim is asserted.

Subd. 2. Agricultural operation not a nuisance.

(a) An agricultural operation is not and shall not become a private or public nuisance after two years from its established date of operation as a matter of law if the operation:

(1) Is located in an agriculturally zoned area;

(2) complies with the provisions of all applicable federal, state, or county laws, regulations, rules, and ordinances and any permits issued for the agricultural operation; and

(3) operates according to generally accepted agricultural practices.

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

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

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

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

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

Subd. 3. Existing contracts.

This section shall not be construed to invalidate any contracts or commitments made before January 1, 1983.

Subd. 4. Severability.

If a provision of this section, or application thereof to any person or set of circumstances, is held invalid or unconstitutional, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application. To that end, the provisions of this section are declared to be severable.

Subd. 5.

Repealed by Laws 1983, c. 182, § 2.

Mississippi
Miss. Code Ann. § 95-3-29

§ 95-3-29. Agricultural operations, immunity

(1) In any nuisance action, public or private, against an agricultural operation, including forestry activity, proof that the agricultural operation, including forestry activity, has existed for one (1) year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal permits.

(2) The following words and phrases as used in this section shall have the meanings given them in this section:

(a) "Agricultural operation" includes, without limitation, any facility or production site for the production and processing of crops, or products thereof, livestock, or products thereof, farm-raised fish and fish products, livestock products, honeybees, honey and other products of the beehive, wood, timber or forest products, fowl or plants for breeding or sales and poultry or poultry products for commercial or industrial purposes. "Agricultural operation" also includes the use of farm machinery, equipment, devices, chemicals, products for agricultural use, materials and structures designed for agricultural use and used in accordance with best agricultural management practices and are in compliance with any applicable state and federal permits.

(b) "Forestry activity" means any activity associated with the reforesting, growing, managing, protecting and harvesting of timber, wood and forest products including nongame species.

(c) "Traditional farm practices" means those accepted customs and standards established and followed by similar agricultural operations under similar circumstances.

(3) The provisions of this section shall not be construed to affect any provision of the "Mississippi Air and Water Pollution Control Law."

(4) This section shall not affect actions commenced prior to July 1, 1980.

Missouri
Mo. Rev. Stat. § 537.295

Statutes are current through the end of the 2020 First Extraordinary Session of the 100th General Assembly.

537.295. Agricultural operation not to be deemed a nuisance, when; exceptions; costs

(a) No agricultural operation or any of its appurtenances shall be deemed to be a nuisance, private or public, by any changed conditions in the locality thereof after the facility has been in operation for more than one year, when the facility was not a nuisance at the time the operation began. An agricultural operation protected pursuant to the provisions of this section may reasonably expand its operation in terms of acres or animal units without losing its protected status so long as all county, state, and federal environmental codes, laws, or regulations are met by the agricultural operation. Reasonable expansion shall not be deemed a public or private nuisance, provided the expansion does not create a substantially adverse effect upon the environment or creates a hazard to public health and safety, or creates a measurably significant difference in environmental pressures upon existing and surrounding neighbors because of increased pollution. Reasonable expansion shall not include complete relocation of a farming operation by the owner within or without the present boundaries of the farming operation; however, reasonable expansion of like kind that presently exists, may occur. If a poultry or livestock operation is to maintain its protected status following a reasonable expansion, the operation must ensure that its waste handling capabilities and facilities meet or exceed minimum recommendations of the University of Missouri extension service for storage, processing, or removal of animal waste. The protected status of an

agricultural operation, once acquired, shall be assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, shall not be waived by the temporary cessation of farming or by diminishing the size of the operation. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) As used in this section the term "agricultural operation and its appurtenances" includes, but is not limited to, any facility used in the production or processing for commercial purposes of crops, livestock, swine, poultry, livestock products, swine products or poultry products.

(c) The provisions of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries sustained by it as a result of the pollution or other change in the quantity or quality of water used by that person, firm or corporation for private or commercial purposes, or as a result of any overflow of land owned by or in the possession of any such person, firm or corporation.

(d) The provisions of this section shall not apply to any nuisance resulting from an agricultural operation located within the limits of any city, town or village on August 13, 1982.

(e) In any nuisance action brought in which an agricultural operation is alleged to be a nuisance, and which is found to be frivolous by the court, the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in his behalf in connection with the defense of such action, together with a reasonable amount for attorneys fees.

Montana
MCA 76-2-901

76-2-901. Agricultural activities--legislative finding and purpose
(1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.
(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

76-2-902. Definitions
As used in this part, the following definitions apply:
(1) “Agricultural activity” means a condition or activity that provides an annual gross income of not less than $1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:
(a) produce marketed at roadside stands or farm markets;
(b) noise;
(c) odors;
(d) dust;
(e) fumes;
(f) operation of machinery and irrigation pumps;
(g) movement of water for agricultural activities, including but not limited to use of existing county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities;
(h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;
(i) employment and use of labor;
(j) roadway movement of equipment and livestock;
(k) protection from damage from wildlife;
(l) prevention of trespass;
(m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses;
(n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;
(o) timber harvesting, thinning, and timber regeneration;
(p) burning and stubble and slash disposal; and
(q) plant nursery and commercial greenhouse activities.
(2) “Commercial production of farm products” means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than $1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:
(a) forages and sod crops;
(b) dairy and dairy products;

(c) poultry and poultry products;
(d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;
(e) fruits;
(f) vegetables;
(g) flowers;
(h) seeds;
(i) grasses;
(j) trees, including commercial timber;
(k) fresh water fish and fish products;
(l) apiaries;
(m) equine and other similar products; or
(n) any other product that incorporates the use of food, feed, fiber, or fur.

76-2-903. Local ordinances
A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.

Nebraska

Neb.Rev.St. § 2-4401

2-4401. Act, how cited
Sections 2-4401 to 2-4404 shall be known and may be cited as the Nebraska Right to Farm Act.

2-4402. Terms, defined
As used in the Nebraska Right to Farm Act, unless the context otherwise requires:
(1) Farm or farm operation means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;
(2) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur; and
(3) Public grain warehouse or public grain warehouse operation means any grain elevator building or receptacle in which grain is held for longer than ten days and includes, but is not limited to, all buildings, elevators, and warehouses consisting of one or more warehouse sections within the confines of a city, township, county, or state that are considered a single delivery point with the capability to receive, load out, weigh, and store grain.

2-4403. Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when; suit; limitation
(1) A farm or farm operation or a public grain warehouse or public grain warehouse operation shall not be found to be a public or private nuisance if the farm or farm operation or public grain warehouse or public grain warehouse operation existed before a change in the land use or occupancy of land in and about the locality of such farm or farm operation or public grain warehouse or public grain warehouse operation and before such change in land use or occupancy of land the farm or farm operation or public grain warehouse or public grain warehouse operation would not have been a nuisance.
(2) No suit shall be maintained against a farm or farm operation or public grain warehouse or public grain warehouse operation for public or private nuisance more than two years after the condition which is the subject matter of the suit reaches a level of offense sufficient to sustain a claim of nuisance.
(3) The limitation provided for in this section shall not apply to any action brought to determine compliance with or to enforce a previous order of a court related to the same claim of nuisance or to any claims for additional damages or equitable relief available

when a farm or farm operation or public grain warehouse or public grain warehouse operation fails to remediate a nuisance pursuant to such court order.

2-4404. Applicability of other statutes

The Nebraska Right to Farm Act shall not affect the application of state and federal statutes.

New Hampshire
N.H. Rev. Stat. Ann. §§ 432:32 to 432:35

Current through 2020 Regular Session of the General Court.

432:32 Agricultural Operation.

"Agricultural operation" when used in this subdivision includes any farm, agricultural or farming activity as defined in RSA 21:34-a.

432:33 Immunity from Suit.

No agricultural operation shall be found a public or private nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section shall not apply when any aspect of the agricultural operation is determined to be injurious to public health or safety under RSA 147:1 or RSA 147:2.

432:34 Negligent or Improper Operations.

The provisions of this subdivision shall not apply if a nuisance results from the negligent or improper operation of an agricultural operation. Agricultural operations shall not be found to be negligent or improper when they conform to federal, state and local laws, rules and regulations.

432:35 Limits.

Nothing contained in this subdivision shall be construed to modify or limit the duties and authority conferred upon the department of environmental services under RSA 485 or RSA 485-A or the commissioner of agriculture, markets, and food under any of the chapters in this title.

New Jersey
N.J. Stat. Ann. §§ 4:1C-1 to 4:1C-10.4

Current with laws through L.2020, c. 109 and J.R. No. 2.

4:1C-1. Short title

This act shall be known and may be cited as the "Right to Farm Act."

4:1C-2. Legislative findings

The Legislature finds and declares that:

(1) The retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State;

(2) several factors have combined to create a situation wherein the regulations of various State agencies and the ordinances of individual municipalities may unnecessarily constrain essential farm practices;

(3) it is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry;

(4) all State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;

(5) it is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.

4:1C-3. Definitions

As used in this act:

(1) "Board" or "county board" means a county agriculture development board established pursuant to section 7 of P.L.1983, c. 32 (C.4:1C-14).

(2) "Commercial farm" means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth $2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), (2) a farm management unit less than five acres, producing agricultural or horticultural products worth $50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C.54:4-23.1 et seq.), or (3) a farm management unit that is a beekeeping operation producing honey or other agricultural or horticultural apiary- related products, or providing crop pollination services, worth $10,000 or more annually.

(3) "Committee" means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c. 31 (C.4:1C-4).

(4) "Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

(5) "Farm market" means a facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the

sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least $2,500.

4:1C-3.1. Farm management units performing apiary-related activities; eligibility for commercial farm protections under Right to Farm Act

Notwithstanding the provisions of section 3 of P.L.1983, c. 31 (C.4:1C-3), or any rules or regulations adopted pursuant thereto, to the contrary, a farm management unit that qualifies as a commercial farm for the purposes of the "Right to Farm Act," P.L.1983, c. 31 (C.4:1C-1 et seq.), because it is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth $10,000 or more annually, shall be entitled to the protections provided to any other commercial farm under that act but not for agricultural or horticultural activities that are not apiary-related activities, unless the farm management unit also qualifies as a commercial farm pursuant to section 3 of P.L.1983, c. 31 (C.4:1C-3) for reasons other than as a beekeeping operation as described in that section.

4:1C-4. State agriculture development committee; establishment; membership; terms; vacancies; compensation; meetings; minutes; staff

(a) In order that the State's regulatory action with respect to agricultural activities may be undertaken with a more complete understanding of the needs and difficulties of agriculture, there is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the State Agriculture Development Committee. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the committee is

allocated within the Department of Agriculture, but, notwithstanding that allocation, the committee shall be independent of any supervision or control by the State Board of Agriculture, by the department or by the secretary or any officer or employee thereof, except as otherwise expressly provided in this act. The committee shall constitute an instrumentality of the State, exercising public and essential governmental functions, and the exercise by the committee of the powers conferred by this or any other act shall be held to be an essential governmental function of the State.

(b) The committee shall consist of 11 members, five of whom shall be the Secretary of Agriculture, who shall serve as chairman, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer and the Dean of Cook College, Rutgers University, or their designees, who shall serve ex officio, and six citizens of the State, to be appointed by the Governor with the advice and consent of the Senate, four of whom shall be actively engaged in farming, the majority of whom shall own a portion of the land that they farm, and two of whom shall represent the general public. With respect to the members actively engaged in farming, the State Board of Agriculture shall recommend to the Governor a list of potential candidates and their alternates to be considered for each appointment.

(c)(1) Of the six members first to be appointed, two shall be appointed for terms of two years, two for terms of three years and two for terms of four years. Thereafter, all appointments shall be made for terms of four years. Each of these members shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. A member shall be eligible for reappointment for no more than two consecutive terms. Any vacancy in the membership occurring other than by expiration of

term shall be filled in the same manner as the original appointment but for the unexpired term only.

(2) When an appointed member actively engaged in farming notifies the chairman that the member is unable to attend a publicly noticed meeting, an alternate may be chosen to serve for that member at the meeting. The alternate member shall be chosen by the Governor, in consultation with the President and the Vice President of the State Board of Agriculture, with the advice and consent of the Senate. The alternate member shall be a past member of the State Board of Agriculture who served pursuant to R.S.4:1-4, provided, however, that in no case shall the alternate member have been removed from office pursuant to section 3 of P.L.1948, c. 447 (C.4:1-4.1), or a past member of the State Agriculture Development Committee.

(3) When an appointed member representing the general public notifies the chairman that the member is unable to attend a publicly noticed meeting, an alternate may be chosen to serve for that member at the meeting. The alternate member shall be chosen by the Governor, with the advice and consent of the Senate.

(d) Members of the committee shall receive no compensation but the appointed members may, subject to the limits of funds appropriated or otherwise made available for these purposes, be reimbursed for expenses actually incurred in attending meetings of the committee and in performance of their duties as members thereof.

(e) The committee shall meet at the call of the chairman as soon as may be practicable following appointment of its members and shall establish procedures for the conduct of regular and special meetings, including procedures for the notification of departments of State regulating the activities of commercial agriculture, provided that all meetings are

conducted in accordance with the provisions of the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c. 231 (C.10:4-6 et seq.).

(f) A true copy of the minutes of every meeting of the committee shall be prepared and forthwith delivered to the Governor. No action taken at such meeting by the committee shall have force or effect until 15 days, exclusive of Saturdays, Sundays and public holidays, after such copy of the minutes shall have been so delivered. If, in said 15- day period, the Governor returns such copy of the minutes with a veto of any action taken by the committee at such meeting, such action shall be null and void and of no force and effect.

(g) The department shall provide any personnel that may be required as staff for the committee.

4:1C-5. Powers of committee

The committee may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) adopt and use a seal and alter the same at its pleasure;

(3) sue and be sued;

(4) apply for, receive, and accept from any federal, State, or other public or private source, grants or loans for, or in aid of, the committee's authorized purposes;

(5) enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable for the purposes of the committee or to carry out any power expressly given in this act;

(6) adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B- 1 et seq.), rules and regulations necessary to implement the provisions of this act;

(7) request assistance and avail itself of the services of the employees of any State, county or municipal department, board, commission or agency as may be made available for these purposes.

4:1C-6. Duties of committee

The committee shall:

(1) Consider any matter relating to the improvement of farm management practices;

(2) review and evaluate the proposed rules, regulations and guidelines of any State agency in terms of feasibility, effect and conformance with the intentions and provisions of this act;

(3) study, develop and recommend to the appropriate State departments and agencies thereof a program of agricultural management practices which shall include, but not necessarily be limited to, air and water quality control, noise control, pesticide control, fertilizer application, integrated pest management, and labor practices;

(4) upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the committee of the reasons for accepting,

conditionally accepting or rejecting the committee's recommendations and submit a schedule for implementing all or a portion of the committee's recommendations.

(5) Within 1 year of the effective date of this act and at least annually thereafter, recommend to the Governor, the Legislature and the appropriate State departments and agencies thereof any actions which should be taken that recognize the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in the State, minimize unnecessary constraints on essential agricultural activities, and are consistent with the promotion of the public health, safety and welfare.

4:1C-7. Additional duties of committee

The committee shall:

(1) Establish guidelines and adopt criteria for identification of agricultural lands suitable for inclusion in agricultural development areas and farmland preservation programs to be developed and adopted by a board applying for moneys from the fund;

(2) certify to the secretary that the board has approved the agricultural development area and the farmland preservation program within the area where matching grants from the fund shall be expended;

(3) review State programs and plans and any other public or private action which would adversely affect the continuation of agriculture as a viable use of the land in agricultural development areas and recommend any administrative action, executive orders or legislative remedies which may be appropriate to lessen these adverse effects;

(4) study, develop and recommend to the departments and agencies of State government a program of recommended agricultural management practices appropriate to agricultural development areas, municipally approved programs (provided that these

practices shall not be more restrictive than for those areas not included within municipally approved programs) and other farmland preservation programs, which program shall include but not necessarily be limited to: air and water quality control; noise control; pesticide control; fertilizer application; soil and water management practices; integrated pest management; and labor practices;

(5) review and approve, conditionally approve or disapprove all applications for funds pursuant to the provisions of this act; and

(6) generally act as an advocate for and promote the interests of productive agriculture and farmland retention within the administrative processes of State government.

4:1C-8. Appropriated moneys; use by secretary

The secretary shall use the sum of money appropriated by section 31 of this act, and any other sums as may be appropriated from time to time for like purposes, to assist the committee in administering the provisions of this act to make grants to assist boards or any other local units as authorized herein, to acquire development easements, to purchase fee simple absolute titles to farmland for resale with agricultural deed restrictions for farmland preservation purposes, and to make grants to landowners to fund soil and water conservation projects, on land devoted to farmland preservation programs within duly certified agricultural development areas. With respect to moneys to be utilized to make grants for soil and water conservation projects, the secretary shall not approve any grant unless it shall be for a project which is also part of a farm conservation plan approved by the local soil conservation district.

4:1C-9. Commercial farm owners and operators; permissible activities

Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c. 48 (C.4:1C-10.1 et al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:

(1) Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c. 157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;

(2) process and package the agricultural output of the commercial farm;

(3) provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;

(4) replenish soil nutrients and improve soil tilth;

(5) control pests, predators and diseases of plants and animals;

(6) clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas;

(7) conduct on-site disposal of organic agricultural wastes;

(8) conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm;

(9) engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of P.L.2009, c. 213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor and pursuant to section 3 of P.L.2009, c. 213 (C.4:1C-9.2); and

(10) engage in any other agricultural activity as determined by the State Agriculture Development Committee and adopted by rule or regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

4:1C-9.1. Rules and regulations

(a) The State Agriculture Development Committee, in consultation with the Department of Labor, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations determining the classification for agriculture, forestry, fishing, and trapping under the North American Industry Classification System of codes, and for the production of agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities that are described in the Standard Industrial Classification codes for agriculture, forestry, fishing

and trapping, for the purposes of compliance with P.L.1983, c. 31 (C.4:1C-1 et seq.). The State Agriculture Development Committee shall ensure that the provisions of P.L.1983, c. 31 (C.4:1C-1 et seq.) shall continue to apply to any owner or operator of a commercial farm, or other person, to whom the provisions applied prior to the effective date of P.L.2003, c. 157 (C.13:1D-138 et al.).

(b) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the State Agriculture Development Committee may, immediately upon filing the regulations with the Office of Administrative Law, adopt such temporary regulations as the committee determines necessary to implement the provisions of P.L.2003, c. 157 (C.13:1D-138 et al.). The regulations shall be in effect for a period not to exceed 270 days after the date of filing, except that in no case shall the regulations be in effect one year after the effective date of P.L.2003, c. 157 (C.13:1D-138 et al.). The regulations may thereafter be amended, adopted or readopted as the committee determines necessary in accordance with the "Administrative Procedure Act".

4:1C-9.2. Rules and regulations relative to agricultural management practices for biomass, solar or wind energy generation

(a) The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.): (1) such rules and regulations as may be necessary for the implementation of subsection i. of section 6 of P.L.1983, c. 31 (C.4:1C-9); and (2) agricultural management practices for biomass energy generation on commercial farms, including, but not necessarily limited to, standards for the management of odor, dust, and noise.

(b) The Board of Public Utilities shall provide technical assistance and support to the State Agriculture Development Committee with regard to the committee's responsibilities in connection with this section and subsection i. of section 6 of P.L.1983, c. 31 (C.4:1C-9).

(c) Notwithstanding any provision of this section or subsection i. of section 6 of P.L.1983, c. 31 (C.4:1C-9) to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the "Pinelands Protection Act," P.L.1979, c. 111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c. 111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L. 1979, c. 111.

(d) For the purposes of this section and subsection i. of section 6 of P.L. 1983, c. 31 (C.4:1C-9), "biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the commercial farm and which can be used to generate energy in a sustainable manner.

4:1C-10. Commercial agricultural operation, activity or structure; presumption

In all relevant actions filed subsequent to the effective date of P.L.1998, c. 48 (C.4:1C-10.1 et al.), there shall exist an irrebuttable presumption that no commercial agricultural operation, activity or structure which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted

agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto and which does not pose a direct threat to public health and safety, shall constitute a public or private nuisance, nor shall any such operation, activity or structure be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property.

4:1C-10.1. Complaints against commercial farms

(a) Any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court.

(b) In the event the dispute concerns activities that are addressed by an agricultural management practice recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), the county board shall hold a public hearing and issue findings and recommendations within 60 days of the receipt of the complaint.

(c) In the event the committee has not recommended an agricultural management practice concerning activities addressed by a complaint, the county board shall forward the complaint to the committee for a determination of whether the disputed agricultural operation constitutes a generally accepted agricultural operation or practice. Upon receipt of the complaint, the committee shall hold a public hearing and issue its decision, in writing, to the county board. The county board shall hold a public hearing and issue its findings and recommendations within 60 days of the receipt of the committee's decision.

(d) Any person aggrieved by the decision of the county board shall appeal the decision to the committee within 10 days. The committee shall schedule a hearing and make a determination within 90 days of receipt of the petition for review.

(e) The decision of the State Agriculture Development Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court. Any decision of a county agriculture development board that is not appealed shall be binding.

4:1C-10.2. Appeal of county board decisions to the State Agriculture Development Committee

Any person aggrieved by any decision of a county board regarding specific agricultural management practices or conflict resolution, may appeal the decision to the State Agriculture Development Committee in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The decision of the State Agriculture Development Committee shall be considered a final administrative agency decision.

4:1C-10.3. Agriculture industry impact statements; issuance; contents

(a) In proposing a rule for adoption, the agency involved shall issue an agriculture industry impact statement setting forth the nature and extent of the impact of the proposed rule on the agricultural industry that shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c. 410 (C.52:14B-4).

(b) During the public comment period on the proposed rule, the State Agriculture Development Committee shall review the rule proposal to determine its impact on the agriculture industry of the State.

(c) If the State Agriculture Development Committee determines that the proposed rule may have a significant adverse impact on the agricultural industry of the State and notifies the relevant agency of that determination during the public comment period on the proposed rule, the agency shall consult with the State Agriculture Development Committee prior to the adoption of the rule.

4:1C-10.4. Adoption of State Agriculture Development Committee standards; direct threat to public health and safety

(a) The State Agriculture Development Committee shall adopt, in consultation with the Attorney General and pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), standards determining what constitutes a direct threat to public safety pursuant to section 6 and section 7 of P.L.1983, c. 31 (C.4:1C-9 and C.4:1C-10).

(b) The State Agriculture Development Committee shall adopt, in consultation with the Department of Health and Senior Services and pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), standards determining what constitutes a direct threat to public health pursuant to section 6 and section 7 of P.L.1983, c. 31 (C.4:1C-9 and C.4:1C-10).

(c) The State Agriculture Development Committee shall adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.1998, c. 48 (C.4:1C-10.1 et al.) and P.L.1983, c. 31 (C.4:1C-1 et al.).

New Mexico
N.M. Stat. Ann. §§ 47-9-1 to 47-9-7

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

§ 47-9-1. Short title

Sections 47-9-1 through 47-9-7 NMSA 1978 may be cited as the "Right to Farm Act".

§ 47-9-2. Purpose of act

The purpose of the Right to Farm Act is to conserve, protect, encourage, develop and improve agricultural land for the production of agricultural products and to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.

§ 47-9-3. Agricultural operations deemed not a nuisance

(a) Any agricultural operation or agricultural facility is not, nor shall it become, a private or public nuisance by any changed condition in or about the locality of the agricultural operation or agricultural facility if the operation was not a nuisance at the time the operation began and has been in existence for more than one year; except that the provisions of this section shall not apply whenever an agricultural operation or agricultural facility is operated negligently or illegally such that the operation or facility is a nuisance.

(b) Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation or agricultural facility a nuisance or provides for abatement of it as a nuisance under the circumstances set forth in this section shall not apply when an agricultural operation is located within the corporate limits of any municipality as of April 8, 1981.

(c) The established date of operation is the date on which an agricultural operation commenced or an agricultural facility was originally constructed. If an agricultural operation or agricultural facility is subsequently expanded or a new technology is adopted, the established date of operation does not change.

(d) No cause of action based upon nuisance may be brought by a person whose claim arose following the purchase, lease, rental, or occupancy of property proximate to a previously established agricultural operation or agricultural facility, except when such previously established agricultural operation or agricultural facility has substantially changed in the nature and scope of its operations.

§ 47-9-4. Contracts; agreements

The Right to Farm Act shall not invalidate any contracts made prior to the enactment of that act but shall be applicable only to contracts and agreements after the effective date of that act. This section shall not be construed to invalidate or supercede land uses and related powers of counties and municipalities.

§ 47-9-5. Definitions

As used in the Right To Farm Act:

(1) "Agricultural facility" includes but is not limited to any land, building, structure, pond, impoundment, appurtenance, machinery or equipment that is used for the commercial production or processing of crops, livestock, animals, poultry, honey bees, honey bee products, livestock products, poultry products or products that are used in commercial agriculture;

(2) "agricultural operation" means:

(A) The plowing, tilling or preparation of soil at an agricultural facility;

(B) the planting, growing, fertilizing or harvesting of crops;

(C) the application of pesticides, herbicides, or other chemicals, compounds or substances to crops, weeds or soil in the connection with production of crops, livestock, animals or poultry;

(D) the breeding, hatching, raising, producing, feeding, keeping, slaughtering or processing of livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits or similar farm animals for commercial purposes;

(E) the production and keeping of honey bees, production of honey bee products and honey bee processing facilities;

(F) the production, processing or packaging of eggs or egg products;

(G) the manufacturing of feed for poultry or livestock;

(H) the rotation of crops;

(I) commercial agriculture;

(J) the application of existing, changed or new technology, practices, processes or products to an agricultural operation; or

(K) the operation of a roadside market.

§ 47-9-6. Damages

The provisions of the Right to Farm Act do not affect or defeat the right of a person to recover damages from injuries or damages sustained by him because of the pollution of, or change in the condition of, waters of a stream or because of an overflow on his lands.

§ 47-9-7. Frivolous lawsuits

If a court determines that any action alleging that an agricultural operation is a nuisance is frivolous, the court may award reasonable costs and attorneys' fees to the defendant.

New York
N.Y. Agric. & Mkts. §§ 300 to 310

Current through L.2019, chapter 758 and L.2020, chapters 1 to 250.

§ 300. Declaration of legislative findings and intent

(a) It is hereby found and declared that many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

(b) The socio-economic vitality of agriculture in this state is essential to the economic stability and growth of many local communities and the state as a whole. It is, therefore, the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes.

(c) The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

§ 301. Definitions

When used in this article:

(1) "Agricultural assessment value" means the value per acre assigned to land for assessment purposes determined pursuant to the capitalized value of production procedure prescribed by section three hundred four-a of this article.

(2) "Crops, livestock and livestock products" shall include but not be limited to the following:

(A) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

(B) Fruits, including apples, peaches, grapes, cherries and berries.

(C) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.

(D) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

(E) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.

(F) Maple sap.

(G) Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

(H) Aquaculture products, including fish, fish products, water plants and shellfish.

(I) Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

(J) Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony.

(K) Actively managed log-grown woodland mushrooms.

(L) Industrial hemp as defined in section five hundred five of this chapter.

(3) "Farm woodland" means land used for the production of woodland products intended for sale, including but not limited to logs, lumber, posts and firewood. Farm woodland shall not include land used to produce Christmas trees or land used for the processing or retail merchandising of woodland products.

(4) "Land used in agricultural production" means not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation or a commercial equine operation with annual gross receipts of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products. Land used in agricultural production shall also include:

(A) Rented land which otherwise satisfies the requirements for eligibility for an agricultural assessment.

(i) Land used by a not-for-profit institution for the purposes of agricultural research that is intended to improve the quality or quantity of crops, livestock or livestock products. Such land shall qualify for an agricultural assessment upon application made

pursuant to paragraph (1) of subdivision (a) of section three hundred five of this article, except that no minimum gross sales value shall be required.

(B) Land of not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not independently satisfy the gross sales value requirement, where such land was used in such production for the preceding two years and currently is being so used under a written rental arrangement of five or more years in conjunction with land which is eligible for an agricultural assessment.

(C) Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural assessment. Such land shall include land used for agricultural amusements which are produced from crops grown or produced on the farm, provided that such crops are harvested and marketed in the same manner as other crops produced on such farm. Such agricultural amusements shall include, but not be limited to, so-called “corn mazes” or “hay bale mazes”.

(D) Farm woodland which is part of land which is qualified for an agricultural assessment, provided, however, that such farm woodland attributable to any separately described and assessed parcel shall not exceed fifty acres.

(E) Land set aside through participation in a federal conservation program pursuant to title one of the federal food security act of nineteen hundred eighty-five or any subsequent federal programs established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities and such land shall qualify for agricultural

assessment upon application made pursuant to paragraph (1) of subdivision (a) of section three hundred five of this article, except that no minimum gross sales value shall be required.

(F) Land of not less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more, or land of less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more.

(G) Land under a structure within which crops, livestock or livestock products are produced, provided that the sales of such crops, livestock or livestock products meet the gross sales requirements of paragraph (F) of this subdivision.

(H) Land that is owned or rented by a farm operation in its first or second year of agricultural production, or, in the case of a commercial horse boarding operation in its first or second year of operation, that consists of (1) not less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more; or (2) less than seven acres used as a single operation for the production for sale of crops, livestock or livestock products of an annual gross sales value of fifty thousand dollars or more; or (3) land situated under a structure within which crops, livestock or livestock products are produced, provided that such crops, livestock or livestock products have an annual gross sales value of (i) ten thousand dollars or more, if the farm operation uses seven or more acres in agricultural production, or (ii) fifty thousand dollars or more, if the farm operation uses less than

seven acres in agricultural production; or (4) not less than seven acres used as a single operation to support a commercial horse boarding operation with annual gross receipts of ten thousand dollars or more.

(I) Land of not less than seven acres used as a single operation for the production for sale of orchard or vineyard crops when such land is used solely for the purpose of planting a new orchard or vineyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

(J) Land of not less than seven acres used as a single operation for the production and sale of Christmas trees when such land is used solely for the purpose of planting Christmas trees that will be made available for sale, whether dug for transplanting or cut from the stump and when such land is owned or rented by a newly established farm operation in its first, second, third, fourth or fifth year of agricultural production.

(K) Land used to support an apiary products operation which is owned by the operation and consists of (i) not less than seven acres nor more than ten acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more or (ii) less than seven acres used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of fifty thousand dollars or more. The land used to support an apiary products operation shall include, but not be limited to, the land under a structure within which apiary products are produced, harvested and stored for sale; and a buffer area maintained

by the operation between the operation and adjacent landowners. Notwithstanding any other provision of this subdivision, rented land associated with an apiary products operation is not eligible for an agricultural assessment based on this paragraph.

(L) Land that is owned or rented by a farm operation in its first or second year of agricultural production or in the case of a commercial equine operation, in its first or second year of operation, that consists of not less than seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing.

(M) Land used in silvopasturing shall be limited to up to ten fenced acres per large livestock, including cattle, horses and camelids, and up to five fenced acres per small livestock, such as sheep, hogs, goats and poultry. For the purposes of this subdivision, "silvopasturing" shall mean the intentional combination of trees, forages and livestock managed as a single integrated practice for the collective benefit of each, including the planting of appropriate grasses and legume forages among trees for sound grazing and livestock husbandry.

(N) Land of not less than seven acres used as a single operation for the production for sale of hops when such land is used solely for the purpose of planting a

new hopyard and when such land is also owned or rented by a newly established farm operation in its first, second, third or fourth year of agricultural production.

(5) "Oil, gas or wind exploration, development or extraction activities" means the installation and use of fixtures and equipment which are necessary for the exploration, development or extraction of oil, natural gas or wind energy, including access roads, drilling apparatus, pumping facilities, pipelines, and wind turbines.

(6) "Unique and irreplaceable agricultural land" means land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties.

(7) "Viable agricultural land" means land highly suitable for a farm operation as defined in this section.

(8) "Conversion" means an outward or affirmative act changing the use of agricultural land and shall not mean the nonuse or idling of such land.

(9) "Gross sales value" means the proceeds from the sale of:

(A) Crops, livestock and livestock products produced on land used in agricultural production provided, however, that whenever a crop is processed before sale, the proceeds shall be based upon the market value of such crop in its unprocessed state;

(B) woodland products from farm woodland eligible to receive an agricultural assessment, not to exceed two thousand dollars annually;

(C) honey and beeswax produced by bees in hives located on an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement;

(D) maple syrup processed from maple sap produced on land used in agricultural production in conjunction with the same or an otherwise qualified farm operation;

(E) or payments received by reason of land set aside pursuant to paragraph e of subdivision four of this section;

(F) or payments received by thoroughbred breeders pursuant to section two hundred fifty-four of the racing, pari-mutuel wagering and breeding law; and

(G) compost, mulch or other organic biomass crops as defined in subdivision sixteen of this section produced on land used in agricultural production, not to exceed five thousand dollars annually.

(10) Renumbered [relabeled] G.

(11) "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section, "compost, mulch or other biomass crops" as defined in subdivision seventeen of this section and "commercial equine operation" as defined in subdivision eighteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

(12) "Agricultural data statement" means an identification of farm operations within an agricultural district located within five hundred feet of the boundary of property upon which an action requiring municipal review and approval by the planning board,

zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law is proposed, as provided in section three hundred five-b of this article.

(13) "Commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.

(14) "Timber operation" means the on-farm production, management, harvesting, processing and marketing of timber grown on the farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

(15) "Agricultural tourism" means activities, including the production of maple sap and pure maple products made therefrom, conducted by a farmer on-farm for the

enjoyment and/or education of the public, which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public's understanding and awareness of farming and farm life.

(16) "Apiary products operation" means an agricultural enterprise, consisting of land owned by the operation, upon which bee hives are located and maintained for the purpose of producing, harvesting and storing apiary products for sale.

(17) "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

(18) "Commercial equine operation" means an agricultural enterprise, consisting of at least seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated

through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, an agricultural enterprise that is proposed or in its first or second year of operation may qualify as a commercial equine operation if it consists of at least seven acres and stables at least ten horses, regardless of ownership, by the end of the first year of operation.

§ 302. County agricultural and farmland protection board

(a)(1) A county legislative body may establish a county agricultural and farmland protection board which shall consist of eleven members, at least four of whom shall be active farmers. At least one member of such board shall represent agribusiness and one member may represent an organization dedicated to agricultural land preservation. These six members of the board shall reside within the county which the respective board serves. The members of the board shall also include the chairperson of the county soil and water conservation district's board of directors or an employee of the county soil and water conservation district designated by the chairperson, a member of the county legislative body, a county cooperative extension agent, the county planning director and the county director of real property tax services. The chairperson shall be chosen by majority vote. Such board shall be established in the event no such board exists at the time of receipt by the county legislative body of a petition for the creation or review of an agricultural district pursuant to section three hundred three of this article, or at the time of

receipt by the county of a notice of intent filing pursuant to subdivision four of section three hundred five of this article. The members of such board shall be appointed by the chairperson of the county legislative body, who shall solicit nominations from farm membership organizations except for the chairperson of the county soil and water conservation district's board of directors or his or her designee, the county planning director and director of real property tax services, who shall serve ex officio. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(2) After the board has been established, the chairperson of the county legislative body shall appoint to it two qualified persons for terms of two years each, two qualified persons for terms of three years each and two qualified persons for a term of four years. Thereafter, the appointment of each member shall be for a term of four years. Appointment of a member of the county legislative body shall be for a term coterminous with the member's term of office. Appointment of the county planning director and county director of real property tax services shall be coterminous with their tenure in such office. The appointment of the chairperson of the county soil and water conservation district's board of directors shall be for a term coterminous with his or her designation as chairperson of the county soil and water conservation district's board of directors. Any member of the board may be reappointed for a succeeding term on such board without limitations as to the number of terms the member may serve.

(3) The county agricultural and farmland protection board shall advise the county legislative body and work with the county planning board in relation to the proposed

establishment, modification, continuation or termination of any agricultural district. The board shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within any proposed or established area and the relation of farming in such area to the county as a whole. The board may review notice of intent filings pursuant to subdivision four of section three hundred five of this article and make findings and recommendations pursuant to that section as to the effect and reasonableness of proposed actions involving the advance of public funds or acquisitions of farmland in agricultural districts by governmental entities. The board shall also assess and approve county agricultural and farmland protection plans.

(4) A county agricultural and farmland protection board may request the commissioner of agriculture and markets to review any state agency rules and regulations which the board identifies as affecting the agricultural activities within an existing or proposed agricultural district. Upon receipt of any such request, the commissioner of agriculture and markets shall, if the necessary funds are available, submit in writing to the board (i) notice of changes in such rules and regulations which he or she deems necessary, (ii) a copy of correspondence with another agency if such rules and regulations are outside his or her jurisdiction, including such rules and regulations being reviewed, and his or her recommendations for modification, or (iii) his or her reasons for determining that existing rules and regulations be continued without modification.

(5) The county agricultural and farmland protection board shall notify the commissioner and the commissioner of the department of environmental conservation of any attempts to propose the siting of solid waste management facilities upon farmland within an agricultural district.

(b) Upon the request of one or more owners of land used in agricultural production the board may review the land classification for such land established by the department of agriculture and markets, consulting with the district soil and water conservation office, and the county cooperative extension service office. After such review, the board may recommend revisions to the classification of specific land areas based on local soil, land and climatic conditions to the department of agriculture and markets.

§ 303. Agricultural districts; creation

(a) Any owner or owners of land may submit a proposal to the county legislative body for the creation of an agricultural district within such county, provided that such owner or owners own at least two hundred fifty acres of the land proposed to be included in the district. Such proposal shall be submitted in such manner and form as may be prescribed by the commissioner, shall include a description of the proposed district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries, and the tax map identification numbers for every parcel in the proposed district. The proposal shall include a review period of eight years.

(b) Upon the receipt of such a proposal, the county legislative body:

(1) Shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed district and by posting a notice on the home page of the county's website; posting such notice in five conspicuous places within the proposed district; and providing such notice in writing by first class mail to those municipalities whose territory encompasses the proposed district. The notice shall contain the following information:

(A) A statement that a proposal for an agricultural district has been filed with the county legislative body pursuant to this article;

(B) a statement that the proposal will be on file open to public inspection in the county clerk's office;

(C) a statement that any county landowner or municipality whose territory encompasses the proposed district may propose a modification of the proposed district in such form and manner as may be prescribed by the commissioner;

(D) a statement that the proposed modification must be filed with the county clerk and the clerk of the county legislature within thirty days of the publication and posting and mailing of such notice; and

(E) a statement that at the termination of the thirty day period, the proposal and proposed modifications will be submitted to the county agricultural and farmland protection board and that thereafter a public hearing will be held on the proposal, proposed modifications, and recommendations of the county agricultural and farmland protection board;

(2) shall receive any proposals for modifications of such proposal which may be submitted by proponents of the district, any county landowners or municipalities within thirty days of the publication and posting and mailing of such notice;

(3) shall, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county agricultural and farmland protection board, which shall, after consultation with the county planning board, within forty-five days report to the county legislative body its recommendations concerning the proposal and proposed modifications; and

(4) shall hold a public hearing in the following manner:

(A) The hearing shall be held at a place within the proposed district or otherwise readily accessible to the proposed district;

(B) the notice shall contain the following information:

(i) A statement of the time, date and place of the public hearing;

(ii) a description of the proposed district, any proposed additions and any recommendations of the county agricultural and farmland protection board; and

(iii) a statement that the public hearing will be held concerning:

(I) the original proposal;

(II) any written amendments proposed during the thirty day review period; and

(III) any recommendations proposed by the county agricultural and farmland protection board;

(C) The notice shall be published in a newspaper having a general circulation within the proposed district and posted on the home page of the county's website and shall be given in writing by first class mail to those municipalities whose territory encompasses the proposed district and any proposed modifications, owners of real property within such a proposed district or any proposed modifications who are listed on the most recent assessment roll, the commissioner and the advisory council on agriculture.

(c) The following factors shall be considered by the county agricultural and farmland protection board and identified as issues for comment at the public hearing:

(1) The viability of active farming within the proposed district and in areas adjacent thereto;

(2) the presence of any viable farm lands within the proposed district and adjacent thereto that are not now in active farming;

(3) the nature and extent of land uses other than active farming within the proposed district and adjacent thereto;

(4) county developmental patterns and needs; and

(5) any other matters which the county legislative body deems to be relevant. In judging viability, any relevant agricultural viability maps prepared by the commissioner shall be considered, as well as soil, climate, topography, other natural factors, markets for farm products, the extent and nature of farm improvements, the present status of farming, anticipated trends in agricultural economic conditions and technology, and such other factors as may be relevant.

(d) The county legislative body, after receiving the report and recommendations, including any recommendations of the county planning board, of the county agricultural and farmland protection board and after such public hearing, may adopt as a plan the proposal or any modification of the proposal it deems appropriate or may act to reject the proposal.

(e) All plans that are adopted shall include: (a) a review period of eight years; (b) only whole tax parcels in the proposed district; and (c) to the extent feasible, include adjacent viable farm lands, and exclude, to the extent feasible, nonviable farm land and non-farm land.

(f) Upon the adoption of a plan, the county legislative body shall submit it to the commissioner. Adopted plans shall be submitted within one year after receipt of a complete proposal as described in subdivision one of this section. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for submission once for up to six additional months.

(g) The commissioner shall have sixty days after receipt of the plan within which to certify to the county legislative body whether the plan is eligible for districting, whether the area to be districted consists predominantly of viable agricultural land, and whether the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state. The commissioner shall submit a copy of such plan to the advisory council on agriculture.

(h) If the commissioner certifies the plan of the proposed district pursuant to subdivision seven of this section, the district shall be created immediately upon certification.

(i) Upon the creation of an agricultural district, the description thereof, which shall include tax map identification numbers for all parcels within the district, plus a map delineating the exterior boundaries of the district in relation to tax parcel boundaries, shall be filed by the county legislative body with the county clerk, the county director of real property tax services, and the commissioner. The commissioner, on petition of the county legislative body, may, for good cause shown, approve the correction of any errors in materials filed pursuant to a district creation at any time subsequent to the creation of any agricultural district.

§ 303-a. Agricultural districts; review

(a) The county legislative body shall review any district created under section three hundred three of this article eight years after the date of its creation and at the end of every eight year period thereafter.

(b) In conducting a district review the county legislative body shall:

(1) Provide notice of such district review by publishing a notice in a newspaper having general circulation within the district and by posting a notice on the home page of the county's website; posting such notice in at least five conspicuous places within the district; and providing such notice in writing by first class mail to those municipalities whose territory encompasses the district. The notice shall identify the municipalities in which the district is found and the district's total area; indicate that a map of the district will be on file and open to public inspection in the office of the county clerk and such other places as the legislative body deems appropriate; and notify municipalities and land owners within the district that they may propose a modification of the district by filing such proposal with the clerk of the county legislature within thirty days of the publication and posting and mailing of such notice;

(2) direct the county agricultural and farmland protection board to prepare a report within forty-five days concerning the following:

(A) The nature and status of farming and farm resources within such district, including the total number of acres of land and the total number of acres of land in farm operations in the district;

(B) the extent to which the district has achieved its original objectives;

(C) the extent to which county and local comprehensive plans, policies and objectives are consistent with and support the district;

(D) the degree of coordination between local laws, ordinances, rules and regulations that apply to farm operations in such district and their influence on farming; and

(E) recommendations to continue, terminate or modify such district.

(3) Hold a public hearing in the following manner:

(A) The hearing shall be held at a place within the district or otherwise readily accessible to the proposed district;

(B) a notice of public hearing shall be published in a newspaper having a general circulation within the district and posted on the home page of the county's website and shall be given in writing by first class mail to those municipalities whose territories encompass the district and any proposed modifications to the district; to persons, as listed on the most recent assessment roll, whose land is the subject of a proposed modification; and to the commissioner;

(C) the notice of hearing shall contain the following information:

(i) A statement of the time, date and place of the public hearing; and

(ii) a description of the district, any proposed modifications and any recommendations of the county agricultural and farmland protection board.

(c)(1) The county legislative body, after receiving the report and recommendation of the county agricultural and farmland protection board, and after public hearing, shall make a finding whether the district should be continued, terminated or modified. If the county legislative body finds that the district should be terminated, it may do so at the end of such eight year period by filing a notice of termination with the county clerk and the commissioner.

(2) The county legislative body may adopt any modification of the district review plan it deems appropriate.

(3) If the county legislative body finds that the district should be continued or modified, it shall submit the district review plan to the commissioner. The district review plan shall include a description of the district, including a map delineating the exterior boundaries of the district which shall conform to tax parcel boundaries; the tax map identification numbers for every parcel in the district; a copy of the report of the county agricultural and farmland protection board required by paragraph (2) of subdivision (b) of this section; and a copy of the testimony given at the public hearing required by paragraph c of subdivision two of this section or a copy of the minutes of such hearing.

(d) The county legislative body shall complete the review process described in this section by either terminating, continuing, or modifying the district on or before the district's anniversary date. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for a district review once for up to six additional months. If the county legislative body does not act, or if a modification of a district is rejected by the county legislative body, the district shall continue as originally constituted, unless the commissioner, after consultation with the advisory council on agriculture, terminates such district, by filing a notice thereof with the county clerk, because the area in the district is no longer predominantly viable agricultural land.

(e) Plan review, certification, correction of any errors and filing shall be conducted in the same manner prescribed for district creation in section three hundred three of this article.

§ 303-b. Agricultural districts; inclusion of viable agricultural land

(a) The legislative body of any county containing a certified agricultural district shall designate an annual thirty-day period within which a land owner may submit to such body a request for inclusion of land which is predominantly viable agricultural land within a certified agricultural district prior to the county established review period. Such request shall identify the agricultural district into which the land is proposed to be included, describe such land, and include the tax map identification number and relevant portion of the tax map for each parcel of land to be included.

(b) Upon the termination of such thirty-day period, if any requests are submitted, the county legislative body shall:

(1) Refer such request or requests to the county agricultural and farmland protection board, which shall, within thirty days report to the county legislative body its recommendations as to whether the land to be included in the agricultural district consists predominantly of "viable agricultural land" as defined in subdivision seven of section three hundred one of this article and the inclusion of such land would serve the public interest by assisting in maintaining a viable agricultural industry within the district; and

(2) publish a notice of public hearing in accordance with subdivision (c) of this section.

(c) The county legislative body shall hold a public hearing upon giving notice in the following manner:

(1) The notice of public hearing shall contain a statement that one or more requests for inclusion of predominantly viable agricultural land within a certified agricultural district have been filed with the county legislative body pursuant to this section; identify

the land, generally, proposed to be included; indicate the time, date and place of the public hearing, which shall occur after receipt of the report of the county agricultural and farmland protection board; and include a statement that the hearing shall be held to consider the request or requests and recommendations of the county agricultural and farmland protection board.

(2) The notice shall be published in a newspaper having a general circulation within the county and shall be given in writing directly to those municipalities whose territory encompasses the lands which are proposed to be included in an agricultural district and to the commissioner.

(d) After the public hearing, the county legislative body shall adopt or reject the inclusion of the land requested to be included within an existing certified agricultural district. Such action shall be taken no later than one hundred twenty days from the termination of the thirty day period described in subdivision one of this section. Any land to be added shall consist of whole tax parcels only. Upon the adoption of a resolution to include predominantly viable agricultural land, in whole or in part, within an existing certified agricultural district, the county legislative body shall submit the resolution, together with the report of the county agricultural and farmland protection board and the tax map identification numbers and tax maps for each parcel of land to be included in an agricultural district to the commissioner.

(e) Within thirty days after receipt of a resolution to include land within a district, the commissioner shall certify to the county legislative body whether the inclusion of predominantly viable agricultural land as proposed is feasible and shall serve the public

interest by assisting in maintaining a viable agricultural industry within the district or districts.

(f) If the commissioner certifies that the proposed inclusion of predominantly viable agricultural land within a district is feasible and in the public interest, the land shall become part of the district immediately upon such certification.

§ 303-c. Consolidation of agricultural districts

Existing agricultural districts may be consolidated with an existing district undergoing review pursuant to and in the same manner prescribed for district review in section three hundred three-a of this article. The notice of public hearing required by subdivision (b) of section three hundred three-a of this article shall be given in writing by first class mail to those municipalities whose territories encompass the districts proposed to be consolidated; and to all persons, as listed on the most recent assessment roll, whose land is the subject of a proposed consolidation. In addition to the information required by subdivision (b) of section three hundred three-a of this article, the notice of hearing shall identify the district into which the existing district or districts will be consolidated and the new anniversary date for the consolidated district.

§ 304-a. Agricultural assessment values

(a) Agricultural assessment values shall be calculated and certified annually in accordance with the provisions of this section.

(b)(1) The commissioner of agriculture and markets shall establish and maintain an agricultural land classification system based upon soil productivity and capability. The agricultural land classification system shall distinguish between mineral and organic soils. There shall be ten primary groups of mineral soils and such other subgroups as the

commissioner determines necessary to represent high-lime and low-lime content. There shall be four groups of organic soils.

(2) The land classification system shall be promulgated by rule by the commissioner following a review of comments and recommendations of the advisory council on agriculture and after a public hearing. In making any revisions to the land classification system the commissioner may, in his or her discretion, conduct a public hearing. The commissioner shall foster participation by county agricultural and farmland protection boards, district soil and water conservation committees, and the cooperative extension service and consult with other state agencies, appropriate federal agencies, municipalities, the New York state college of agriculture and life sciences at Cornell university and farm organizations.

(3) The commissioner shall certify to the commissioner of taxation and finance the soil list developed in accordance with the land classification system and any revisions thereto.

(4) The commissioner shall prepare such materials as may be needed for the utilization of the land classification system and provide assistance to landowners and local officials in its use.

(c)(1) The commissioner of taxation and finance shall annually calculate a single agricultural assessment value for each of the mineral and organic soil groups which shall be applied uniformly throughout the state. A base agricultural assessment value shall be separately calculated for mineral and organic soil groups in accordance with the procedure set forth in subdivision four of this section and shall be assigned as the agricultural assessment value of the highest grade mineral and organic soil group.

(2) The agricultural assessment values for the remaining mineral soil groups shall be the product of the base agricultural assessment value and a percentage, derived from the productivity measurements determined for each soil and related soil group in conjunction with the land classification system, as follows:

Mineral Soil Group	**Percentage of Base Agricultural Assessment Value**
1A	100
1B	89
2A	89
2B	79
3A	79
3B	68
4A	68
4B	58
5A	58
5B	47
6A	47
6B	37

(3) The agricultural assessment values for the remaining organic soil groups shall be the product of the base agricultural assessment value and a percentage, as follows:

Organic Soil Group	**Percentage of**
7	37
8	26
9	16
10	5

(4) The agricultural assessment value for organic soil group A shall be two times the base agricultural assessment value calculated for mineral soil group 1A.

(5) The agricultural assessment value for farm woodland shall be the same as that calculated for mineral soil group seven.

(6) Where trees or vines used for the production of fruit are located on land used in agricultural production, the value of such trees and vines, and the value of all posts, wires and trellises used for the production of fruit, shall be considered to be part of the agricultural assessment value of such land.

(7) The agricultural assessment value for land and waters used in aquacultural enterprises shall be the same as that calculated for mineral soil group 1A.

(d)(1) The base agricultural assessment value shall be the average capitalized value of production per acre for the eight year period ending in the second year preceding the year for which the agricultural assessment values are certified. The capitalized value of production per acre shall be calculated by dividing the product of the value of production per acre and the percentage of net profit by a capitalization rate of ten percent, representing an assumed investment return rate of eight percent and an assumed real property tax rate of two percent.

(2) The value of production per acre shall be the value of production divided by the number of acres harvested in New York state.

(3) The percentage of net profit shall be adjusted net farm income divided by realized gross farm income.

(A) Adjusted net farm income shall be the sum of net farm income, taxes on farm real estate and the amount of mortgage interest debt attributable to farmland, less a management charge of one percent of realized gross farm income plus seven percent of adjusted production expenses.

(B) The amount of mortgage interest debt attributable to farmland shall be the product of the interest on mortgage debt and the percentage of farm real estate value attributable to land.

(C) The percentage of farm real estate value attributable to land shall be the difference between farm real estate value and farm structure value divided by farm real estate value.

(D) Adjusted production expenses shall be production expenses, less the sum of the taxes on farm real estate and the interest on mortgage debt.

(4) The following data, required for calculations pursuant to this subdivision, shall be as published by the United States department of agriculture for all farming in New York state:

(A) Farm real estate value shall be the total value of farmland and buildings, including improvements.

(B) Farm structure value shall be the total value of farm buildings, including improvements.

(C) Interest on mortgage debt shall be the total interest paid on farm real estate debt.

(D) Net farm income shall be realized gross income less production expenses, as adjusted for change in inventory.

(E) Production expenses shall be the total cost of production.

(F) Realized gross income shall be the total of cash receipts from farm marketings, government payments, nonmoney income and other farm income.

(G) Taxes on farm real estate shall be the total real property taxes on farmland and buildings, including improvements.

(H) Number of acres harvested including all reported crops.

(I) Value of production shall be the total estimated value of all reported crops.

(5) In the event that the data required for calculation pursuant to this subdivision is not published by the United States department of agriculture or is incomplete, such required data shall be obtained from the New York state department of agriculture and markets.

(6) Upon completion of each annual calculation of agricultural assessment values, the commissioner of taxation and finance shall publish an annual report, which shall include a schedule of values, citations to data sources and presentation of all calculations. The commissioner of taxation and finance shall thereupon certify the schedule of agricultural assessment values and shall transmit a schedule of such certified values to each assessor. Beginning in the year two thousand six and every five years thereafter, the commissioner of taxation and finance shall transmit copies of such annual reports for the five years previous to such transmittal, to the governor and legislature, the advisory council on agriculture, and other appropriate state agencies and interested parties.

(7) Notwithstanding any other provision of this section to the contrary, in no event shall the change in the base agricultural assessment value for any given year exceed two percent of the base agricultural assessment value of the preceding year.

(e)(1) In carrying out their responsibilities under this section, the commissioner of taxation and finance and the commissioner shall keep the advisory council on agriculture fully apprised on matters relating to its duties and responsibilities.

(2) In doing so, the commissioner of taxation and finance and the commissioner shall provide, in a timely manner, any materials needed by the advisory council on agriculture to carry out its responsibilities under this section.

§ 304-b. Agricultural district data reporting

(a) The commissioner shall file a written report with the governor and the legislature on January first, two thousand eight and biennially thereafter, covering each prior period of two years, concerning the status of the agricultural districts program. Such report shall include, but not be limited to, the total number of agricultural districts, the total number of acres in agricultural districts, a list of the counties that have established county agricultural and farmland protection plans, and a summary of the agricultural protection grants program.

(b) Between report due dates, the commissioner shall maintain the necessary records and data required to satisfy such report requirements and to satisfy information requests received from the governor and the legislature between such report due dates.

§ 305. Agricultural districts; effects

(a) Agricultural assessments.

(1) Any owner of land used in agricultural production within an agricultural district shall be eligible for an agricultural assessment pursuant to this section. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products produced on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant. Such assessment shall be granted

only upon an annual application by the owner of such land on a form prescribed by the commissioner of taxation and finance; provided, however, that after the initial grant of agricultural assessment the annual application shall be on a form prescribed by the commissioner of taxation and finance and shall consist of only a certification by the landowner that the landowner continues to meet the eligibility requirements for receiving an agricultural assessment and seeks an agricultural assessment for the same acreage that initially received an agricultural assessment. The landowner shall maintain records documenting such eligibility which shall be provided to the assessor upon request. The landowner must apply for agricultural assessment for any change in acreage, whether land is added or removed, after the initial grant of agricultural assessment. Any new owner of the land who wishes to receive an agricultural assessment shall make an initial application for such assessment. Such applications shall be on a form prescribed by the commissioner of taxation and finance. The applicant shall furnish to the assessor such information as the commissioner of taxation and finance shall require, including classification information prepared for the applicant's land or water bodies used in agricultural production by the soil and water conservation district office within the county, and information demonstrating the eligibility for agricultural assessment of any land used in conjunction with rented land as specified in paragraph b of subdivision four of section three hundred one of this article. Such application shall be filed with the assessor of the assessing unit on or before the appropriate taxable status date; provided, however, that (i) in the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the

tentative assessment roll is required to be filed by law; or (ii) an application for such an assessment may be filed with the assessor of the assessing unit after the appropriate taxable status date but not later than the last date on which a petition with respect to complaints of assessment may be filed, where failure to file a timely application resulted from: (a) a death of the applicant's spouse, child, parent, brother or sister, (b) an illness of the applicant or of the applicant's spouse, child, parent, brother or sister, which actually prevents the applicant from filing on a timely basis, as certified by a licensed physician, or (c) the occurrence of a natural disaster, including, but not limited to, a flood, or the destruction of such applicant's residence, barn or other farm building by wind, fire or flood. If the assessor is satisfied that the applicant is entitled to an agricultural assessment, the assessor shall approve the application and the land shall be assessed pursuant to this section. Not less than ten days prior to the date for hearing complaints in relation to assessments, the assessor shall mail to each applicant, who has included with the application at least one self-addressed, pre-paid envelope, a notice of the approval or denial of the application. Such notice shall be on a form prescribed by the commissioner of taxation and finance which shall indicate the manner in which the total assessed value is apportioned among the various portions of the property subject to agricultural assessment and those other portions of the property not eligible for agricultural assessment as determined for the tentative assessment roll and the latest final assessment roll. Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.

(2) That portion of the value of land utilized for agricultural production within an agricultural district which represents an excess above the agricultural assessment as determined in accordance with this subdivision shall not be subject to real property taxation. Such excess amount if any shall be entered on the assessment roll in the manner prescribed by the commissioner of taxation and finance.

(3)(A) The assessor shall utilize the agricultural assessment values per acre certified pursuant to section three hundred four-a of this article in determining the amount of the assessment of lands eligible for agricultural assessments by multiplying those values by the number of acres of land utilized for agricultural production and adjusting such result by application of the latest state equalization rate or a special equalization rate as may be established and certified by the commissioner of taxation and finance for the purpose of computing the agricultural assessment pursuant to this paragraph. This resulting amount shall be the agricultural assessment for such lands.

(B) Where the latest state equalization rate exceeds one hundred, or where a special equalization rate which would otherwise be established for the purposes of this section would exceed one hundred, a special equalization rate of one hundred shall be established and certified by the commissioner for the purpose of this section.

(C) Where a special equalization rate has been established and certified by the commissioner for the purposes of this paragraph, the assessor is directed and authorized to recompute the agricultural assessment on the assessment roll by applying such special equalization rate instead of the latest state equalization rate, and to make the appropriate corrections on the assessment roll, subject to the provisions of title two of article twelve of the real property tax law.

(4)(A) If land within an agricultural district which received an agricultural assessment is converted parcels, as described on the assessment roll which include land so converted shall be subject to payments equaling five times the taxes saved in the last year in which the land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years. The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the excess amount of assessed valuation of such land over its agricultural assessment as set forth on the last assessment roll which indicates such an excess. If only a portion of a parcel as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll for which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be added by or on behalf of each taxing jurisdiction to the taxes levied on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than five years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.

(B) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make

such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of one thousand dollars in addition to any payments owed.

(C)(i) An assessor who determines that there is liability for payments and any penalties assessed pursuant to subparagraph (ii) of this paragraph shall notify the landowner by mail of such liability at least ten days prior to the date for hearing complaints in relation to assessments. Such notice shall indicate the property to which payments apply and describe how the payments shall be determined. Failure to provide such notice shall not affect the levy, collection or enforcement or payment of payments.

(ii) Liability for payments shall be subject to administrative and judicial review as provided by law for review of assessments.

(D) If such land or any portion thereof is converted to a use other than for agricultural production by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If the land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land within an agricultural district and eligible for an agricultural assessment shall not be considered to have been converted to a use other than

for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

(E) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the commissioner of taxation and finance on a form prescribed by the commissioner.

(F) The assessing unit, by majority vote of the governing body, may impose a minimum payment amount, not to exceed five hundred dollars.

(G) The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment shall be due under this section.

(5) Notwithstanding any inconsistent general, special or local law to the contrary, if a natural disaster, act of God, or continued adverse weather conditions shall destroy the agricultural production and such fact is certified by the cooperative extension service and, as a result, such production does not produce an average gross sales value of ten thousand dollars or more, the owner may nevertheless qualify for an agricultural assessment provided the owner shall substantiate in such manner as prescribed by the commissioner of taxation and finance that the agricultural production initiated on such land would have produced an average gross sales value of ten thousand dollars or more but for the natural disaster, act of God or continued adverse weather conditions.

(b) Repealed by L.1997, c. 357, § 9.

(c) Policy of state agencies. It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

(d) Limitation on the exercise of eminent domain and other public acquisitions, and on the advance of public funds.

(1) Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of one acre or that the total acquisition within the district would be in excess of ten acres, or which intends to construct, or advance a grant, loan, interest subsidy or other funds within a district to construct, dwellings, commercial or industrial facilities, or water or sewer facilities to serve non-farm structures, shall use all practicable means in undertaking such action to realize the policy and goals set forth in this article, and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse impacts on agriculture in order to sustain a viable farm enterprise or enterprises within the district. The adverse agricultural impacts to be minimized or avoided shall include impacts revealed in the notice of intent process described in this subdivision.

(2) The agency, corporation or government proposing the action shall also, at least sixty-five days prior to such acquisition, construction or advance of public funds, file a notice of intent with the commissioner and the county agricultural and farmland protection board. Such notice shall include a detailed agricultural impact statement setting forth the following:

(A) A detailed description of the proposed action and its agricultural setting;

(B) the agricultural impact of the proposed action including short-term and long-term effects;

(C) any adverse agricultural effects which cannot be avoided should the proposed action be implemented;

(D) alternatives to the proposed action;

(E) any irreversible and irretrievable commitments of agricultural resources which would be involved in the proposed action should it be implemented;

(F) mitigation measures proposed to minimize the adverse impact of the proposed action on the continuing viability of a farm enterprise or enterprises within the district;

(G) any aspects of the proposed action which would encourage non- farm development, where applicable and appropriate; and

(H) such other information as the commissioner may require. The commissioner shall promptly determine whether the notice is complete or incomplete. If the commissioner does not issue such determination within thirty days, the notice shall be deemed complete. If the notice is determined to be incomplete, the commissioner shall notify the party proposing the action in writing of the reasons for that determination. Any

new submission shall commence a new period for department review for purposes of determining completeness.

(3) The provisions of paragraph b of this subdivision shall not apply and shall be deemed waived by the owner of the land to be acquired where such owner signs a document to such effect and provides a copy to the commissioner.

(4) Upon notice from the commissioner that he or she has accepted a notice as complete, the county agricultural and farmland protection board may, within thirty days, review the proposed action and its effects on farm operations and agricultural resources within the district, and report its findings and recommendations to the commissioner and to the party proposing the action in the case of actions proposed by a state agency or public benefit corporation, and additionally to the county legislature in the case of actions proposed by local government agencies.

(5) Upon receipt and acceptance of a notice, the commissioner shall thereupon forward a copy of such notice to the commissioner of environmental conservation and the advisory council on agriculture. The commissioner, in consultation with the commissioner of environmental conservation and the advisory council on agriculture, within forty-five days of the acceptance of a notice, shall review the proposed action and make an initial determination whether such action would have an unreasonably adverse effect on the continuing viability of a farm enterprise or enterprises within the district, or state environmental plans, policies and objectives.

If the commissioner so determines, he or she may (i) issue an order within the forty-five day period directing the state agency, public benefit corporation or local government not to take such action for an additional period of sixty days immediately

following such forty-five day period; and (ii) review the proposed action to determine whether any reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact on agriculture in order to sustain a viable farm enterprise or enterprises within the district.

The commissioner may hold a public hearing concerning such proposed action at a place within the district or otherwise easily accessible to the district upon notice in a newspaper having a general circulation within the district and posted on the home page of the department's website, and individual notice, in writing by first class mail, to the municipalities whose territories encompass the district, the commissioner of environmental conservation, the advisory council on agriculture and the state agency, public benefit corporation or local government proposing to take such action. On or before the conclusion of such additional sixty day period, the commissioner shall report his or her findings to the agency, corporation or government proposing to take such action, to any public agency having the power of review of or approval of such action, and, in a manner conducive to the wide dissemination of such findings, to the public. If the commissioner concludes that a reasonable and practicable alternative or alternatives exist which would minimize or avoid the adverse impact of the proposed action, he or she shall propose that such alternative or alternatives be accepted. If the agency, corporation or government proposing the action accepts the commissioner's proposal, then the requirements of the notice of intent filing shall be deemed fulfilled. If the agency, corporation or government rejects the commissioner's proposal, then it shall provide the commissioner with reasons for rejecting such proposal and a detailed comparison between its proposed action and the commissioner's alternative or alternatives.

(6) At least ten days before commencing an action which has been the subject of a notice of intent filing, the agency, corporation or government shall certify to the commissioner that it has made an explicit finding that the requirements of this subdivision have been met, and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse agricultural impacts revealed in the notice of intent process will be minimized or avoided. Such certification shall set forth the reasons in support of the finding.

(7) The commissioner may request the attorney general to bring an action to enjoin any such agency, corporation or government from violating any of the provisions of this subdivision.

(8) Notwithstanding any other provision of law to the contrary, no solid waste management facility shall be sited on land in agricultural production which is located within an agricultural district, or land in agricultural production that qualifies for and is receiving an agricultural assessment pursuant to section three hundred six of this article. Nothing contained herein, however, shall be deemed to prohibit siting when:

(A) The owner of such land has entered into a written agreement which shall indicate his consent for site consideration; or

(B) the applicant for a permit has made a commitment in the permit application to fund a farm land protection conservation easement within a reasonable proximity to the proposed project in an amount not less than the dollar value of any such farm land purchased for the project; or

(C) the commissioner in concurrence with the commissioner of environmental conservation has determined that any such agricultural land to be taken, constitutes less

than five percent of the project site. For purposes of this paragraph, "solid waste management facility" shall have the same meaning as provided in title seven of article twenty-seven of the environmental conservation law, but shall not include solid waste transfer stations or land upon which sewage sludge is applied, and determinations regarding agricultural district boundaries and agricultural assessments will be based on those in effect as of the date an initial determination is made, pursuant to article eight of the environmental conservation law, as to whether an environmental impact statement needs to be prepared for the proposed project.

(9) This subdivision shall not apply to any emergency project which is immediately necessary for the protection of life or property or to any project or proceeding to which the department is or has been a statutory party.

(10) The commissioner may bring an action to enforce any mitigation measures proposed by a public benefit corporation or a local government, and accepted by the commissioner, pursuant to a notice of intent filing, to minimize or avoid adverse agricultural impacts from the proposed action.

(e) Limitation on power to impose benefit assessments, special ad valorem levies or other rates or fees in certain improvement districts or benefit areas. Within improvement districts or areas deemed benefited by municipal improvements including, but not limited to, improvements for sewer, water, lighting, non-farm drainage, solid waste disposal, including those solid waste management facilities established pursuant to section two hundred twenty-six-b of the county law, or other landfill operations, no benefit assessments, special ad valorem levies or other rates or fees charged for such improvements may be imposed on land used primarily for agricultural production within

an agricultural district on any basis, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land, nor on any farm structure located in an agricultural district unless such structure benefits directly from the service of such improvement district or benefited area; provided, however, that if such benefit assessments, ad valorem levies or other rates or fees were imposed prior to the formation of the agricultural district, then such benefit assessments, ad valorem levies or other rates or fees shall continue to be imposed on such land or farm structure.

(f) Use of assessment for certain purposes. The governing body of a fire, fire protection, or ambulance district for which a benefit assessment or a special ad valorem levy is made, may adopt a resolution to provide that the assessment determined pursuant to subdivision one of this section for such property shall be used for the benefit assessment or special ad valorem levy of such fire, fire protection, or ambulance district.

(g) Notwithstanding any provision of law to the contrary, that portion of the value of land which is used solely for the purpose of replanting or crop expansion as part of an orchard, vineyard, or hopyard shall be exempt from real property taxation for a period of six successive years following the date of such replanting or crop expansion beginning on the first eligible taxable status date following such replanting or expansion provided the following conditions are met:

(1) The land used for crop expansion or replanting must be a part of an existing orchard, vineyard, or hopyard which is located on land used in agricultural production within an agricultural district or such land must be part of an existing orchard, vineyard, or hopyard which is eligible for an agricultural assessment pursuant to this section or

section three hundred six of this article where the owner of such land has filed an annual application for an agricultural assessment;

(2) the land eligible for such real property tax exemption shall not in any one year exceed twenty percent of the total acreage of such orchard, vineyard, or hopyard which is located on land used in agricultural production within an agricultural district or twenty percent of the total acreage of such orchard, vineyard, or hopyard eligible for an agricultural assessment pursuant to this section and section three hundred six of this article where the owner of such land has filed an annual application for an agricultural assessment;

(3) the land eligible for such real property tax exemption must be maintained as land used in agricultural production as part of such orchard, vineyard, or hopyard for each year such exemption is granted; and

(4) when the land used for the purpose of replanting or crop expansion as part of an orchard, vineyard, or hopyard is located within an area which has been declared by the governor to be a disaster emergency in a year in which such tax exemption is sought and in a year in which such land meets all other eligibility requirements for such tax exemption set forth in this subdivision, the maximum twenty percent total acreage restriction set forth in paragraph two of this subdivision may be exceeded for such year and for any remaining successive years, provided, however, that the land eligible for such real property tax exemption shall not exceed the total acreage damaged or destroyed by such disaster in such year or the total acreage which remains damaged or destroyed in any remaining successive year. The total acreage for which such exemption is sought

pursuant to this paragraph shall be subject to verification by the commissioner or his designee.

In administering this subdivision, the portion of the value of land eligible for such real property tax exemption shall be determined based on the average per acre assessment of all agricultural land of the specific tax parcel as reported in a form approved by the commissioner of taxation and finance.

§ 305-a. Coordination of local planning and land use decision-making with the agricultural districts program

(a) Policy of local governments.

(1) Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

(2) Upon the request of any municipality, farm owner or operator, the commissioner shall render an opinion to the appropriate local government officials, as to whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to agricultural practices and to the appropriate local land use enforcement officials administering local land use regulations, ordinances, or local laws or reviewing a permit pertaining to agricultural practices.

(3) The commissioner, upon his or her own initiative or upon the receipt of a complaint from a person within an agricultural district, may bring an action to enforce the provisions of this subdivision.

§ 305-b. Agricultural data statement

(a) Submission, evaluation. Any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by a planning board, zoning board of appeals, town board, or village board of trustees pursuant to article sixteen of the town law or article seven of the village law, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The planning board, zoning board of appeals, town board, or village board of trustees shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of any other application form required by local law, ordinance or regulation.

(b) Notice provision. Upon the receipt of such application by the planning board, zoning board of appeals, town board, or village board of trustees, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. The notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the project. The cost of mailing the notice shall be borne by the applicant.

(c) Content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

§ 305-c. Review of proposed rules and regulations of state agencies affecting the agricultural industry

(a) Upon request of the state advisory council on agriculture, or upon his or her own initiative, the commissioner may review and comment upon a proposed rule or regulation by another state agency which may have an adverse impact on agriculture and farm operations in this state, and file such comment with the proposing agency and the administrative regulations review commission. Each comment shall be in sufficient detail to advise the proposing agency of the adverse impact on agriculture and farm operations and the recommended modifications. The commissioner shall prepare a status report of any actions taken in accordance with this section and include it in the department's annual report.

§ 306. Agricultural lands outside of districts; agricultural assessments

(a) Any owner of land used in agricultural production outside of an agricultural district shall be eligible for an agricultural assessment as provided herein. If an applicant rents land from another for use in conjunction with the applicant's land for the production for sale of crops, livestock or livestock products, the gross sales value of such products

on such rented land shall be added to the gross sales value of such products produced on the land of the applicant for purposes of determining eligibility for an agricultural assessment on the land of the applicant.

Such assessment shall be granted pursuant to paragraphs one, two and six of subdivision one of section three hundred five of this article as if such land were in an agricultural district, provided the landowner annually submits to the assessor an application for an agricultural assessment on or before the taxable status date. In the year of a revaluation or update of assessments, as those terms are defined in section one hundred two of the real property tax law, the application may be filed with the assessor no later than the thirtieth day prior to the day by which the tentative assessment roll is required to be filed by law. Nothing therein shall be construed to limit an applicant's discretion to withhold from such application any land, or portion thereof, contained within a single operation.

(b)(1)(A) If land which received an agricultural assessment pursuant to this section is converted at any time within eight years from the time an agricultural assessment was last received, such conversion shall subject the land so converted to payments in compensation for the prior benefits of agricultural assessments. The amount of the payments shall be equal to five times the taxes saved in the last year in which land benefited from an agricultural assessment, plus interest of six percent per year compounded annually for each year in which an agricultural assessment was granted, not exceeding five years.

(B) The amount of taxes saved for the last year in which the land benefited from an agricultural assessment shall be determined by applying the applicable tax rates to the

amount of assessed valuation of such land in excess of the agricultural assessment of such land as set forth on the last assessment roll which indicates such an excess. If only a portion of such land as described on the assessment roll is converted, the assessor shall apportion the assessment and agricultural assessment attributable to the converted portion, as determined for the last assessment roll on which the assessment of such portion exceeded its agricultural assessment. The difference between the apportioned assessment and the apportioned agricultural assessment shall be the amount upon which payments shall be determined. Payments shall be levied in the same manner as other taxes, by or on behalf of each taxing jurisdiction on the assessment roll prepared on the basis of the first taxable status date on which the assessor considers the land to have been converted; provided, however, that no payments shall be imposed if the last assessment roll upon which the property benefited from an agricultural assessment, was more than eight years prior to the year for which the assessment roll upon which payments would otherwise be levied is prepared.

(C) Whenever a conversion occurs, the owner shall notify the assessor within ninety days of the date such conversion is commenced. If the landowner fails to make such notification within the ninety day period, the assessing unit, by majority vote of the governing body, may impose a penalty on behalf of the assessing unit of up to two times the total payments owed, but not to exceed a maximum total penalty of one thousand dollars in addition to any payments owed.

(2)(A) An assessor who determines that there is liability for payments and any penalties pursuant to subparagraph (B) of this paragraph shall notify the landowner of such liability at least ten days prior to the day for hearing of complaints in relation to

assessments. Such notice shall specify the area subject to payments and shall describe how such payments shall be determined. Failure to provide such notice shall not affect the levy, collection, or enforcement of payments.

(B) Liability for payments shall be subject to administrative and judicial review as provided by law for the review of assessments.

(C) An assessor who imposes any such payments shall annually, and within forty-five days following the date on which the final assessment roll is required to be filed, report such payments to the commissioner of taxation and finance on a form prescribed by the commissioner.

(D) The assessing unit, by majority vote of the government body, may impose a minimum payment amount, not to exceed five hundred dollars.

(3) If such land or any portion thereof is converted by virtue of oil, gas or wind exploration, development, or extraction activity or by virtue of a taking by eminent domain or other involuntary proceeding other than a tax sale, the land or portion so converted shall not be subject to payments. If land so converted constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and adjust the agricultural assessment attributable to the portion of the parcel not subject to such conversion by subtracting the proportionate part of the agricultural assessment attributable to the portion so converted. Provided further that land outside an agricultural district and eligible for an agricultural assessment pursuant to this section shall not be considered to have been converted to a use other than for agricultural production solely due to the conveyance of oil, gas or wind rights associated with that land.

(4) The purchase of land in fee by the city of New York for watershed protection purposes or the conveyance of a conservation easement by the city of New York to the department of environmental conservation which prohibits future use of the land for agricultural purposes shall not be a conversion of parcels and no payment for the prior benefits of agricultural assessments shall be due under this section.

(c) Upon the inclusion of such agricultural lands in an agricultural district formed pursuant to section three hundred three, the provisions of section three hundred five shall be controlling.

(d) A payment levied pursuant to subparagraph (A) of paragraph one of subdivision (b) of this section shall be a lien on the entire parcel containing the converted land, notwithstanding that less than the entire parcel was converted.

(e) Use of assessment for certain purposes. The governing body of a water, lighting, sewer, sanitation, fire, fire protection, or ambulance district for whose benefit a special assessment or a special ad valorem levy is imposed, may adopt a resolution to provide that the assessments determined pursuant to subdivision one of this section for property within the district shall be used for the special assessment or special ad valorem levy of such special district.

§ 307. Promulgation of rules and regulations

The commissioner of taxation and finance and the commissioner are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem necessary to effectuate the purposes of this article. Where a document or any other paper or information is required, by such rules and regulations, or by any provision of this article, to be filed with, or by, a county clerk or any other local official, such clerk or

other local official may file such document, paper, or information as he or she deems proper, but shall also file or record it in any manner directed by the commissioner of taxation and finance, by rule or regulation. In promulgating such a rule or regulation, such commissioner shall consider, among any other relevant factors, the need for security of land titles, the requirement that purchasers of land know of all potential tax and penalty liabilities, and the desirability that the searching of titles not be further complicated by the establishment of new sets of record books.

§ 308. Right to farm

(a)(1) The commissioner shall, in consultation with the state advisory council on agriculture, issue opinions upon request from any person as to whether particular agricultural practices are sound.

(2) Sound agricultural practices refer to those practices necessary for the on- farm production, preparation and marketing of agricultural commodities. Examples of activities which entail practices the commissioner may consider include, but are not limited to, operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; agricultural tourism; "timber operation," as defined in subdivision fourteen of section three hundred one of this article and construction and use of farm structures. The commissioner shall consult appropriate state agencies and any guidelines recommended by the advisory council on agriculture. The commissioner may consult as appropriate, the New York state college of agriculture and life sciences and the U.S.D.A. natural resources conservation service, and provide such information, after the issuance of a formal opinion, to the municipality in which the

agricultural practice being evaluated is located. The commissioner shall also consider whether the agricultural practices are conducted by a farm owner or operator as part of his or her participation in the AEM program as set forth in article eleven-A of this chapter. Such practices shall be evaluated on a case-by-case basis.

(b) Upon the issuance of an opinion pursuant to this section, the commissioner shall publish a notice in a newspaper having a general circulation in the area surrounding the practice and notice shall be given in writing to the owner of the property on which the practice is conducted and any adjoining property owners. The opinion of the commissioner shall be final, unless within thirty days after publication of the notice a person affected thereby institutes a proceeding to review the opinion in the manner provided by article seventy-eight of the civil practice law and rules.

(c) Notwithstanding any other provisions of law, on any land in an agricultural district created pursuant to section three hundred three or land used in agricultural production subject to an agricultural assessment pursuant to section three hundred six of this article, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the commissioner. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

(d) The commissioner, in consultation with the state advisory council on agriculture, shall issue an opinion within thirty days upon request from any person as to whether particular land uses are agricultural in nature. Such land use decisions shall be evaluated on a case-by-case basis.

(e) The commissioner shall develop and make available to prospective grantors and purchasers of real property located partially or wholly within any agricultural district in this state and to the general public, practical information related to the right to farm as set forth in this article including, but not limited to right to farm disclosure requirements established pursuant to section three hundred ten of this article and section three hundred thirty-three-c of the real property law.

§ 308-a. Fees and expenses in certain private nuisance actions

(a) Definitions. For purposes of this section:

(1) "Action" means any civil action brought by a person in which a private nuisance is alleged to be due to an agricultural practice on any land in an agricultural district or subject to agricultural assessments pursuant to section three hundred three or three hundred six of this article, respectively.

(2) "Fees and other expenses" means the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees, including fees for work performed by law students or paralegals under the supervision of an attorney, incurred in connection with the defense of any cause of action for private nuisance which is alleged as part of a civil action brought by a person.

(3) "Final judgment" means a judgment that is final and not appealable, and settlement.

(4) "Prevailing party" means a defendant in a civil action brought by a person, in which a private nuisance is alleged to be due to an agricultural practice, where the defendant prevails in whole or in substantial part on the private nuisance cause of action.

(b) Fees and other expenses in certain private nuisance actions.

(1) When awarded. In addition to costs, disbursements and additional allowances awarded pursuant to sections eight thousand two hundred one through eight thousand two hundred four and eight thousand three hundred one through eight thousand three hundred three-a of the civil practice law and rules, and except as otherwise specifically provided by statute, a court shall award to a prevailing party, other than the plaintiff, fees and other expenses incurred by such party in connection with the defense of any cause of action for private nuisance alleged to be due to an agricultural practice, provided such agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued by the commissioner under section three hundred eight of this article, prior to the start of any trial of the action or settlement of such action, unless the court finds that the position of the plaintiff was substantially justified or that special circumstances make an award unjust. Fees shall be determined pursuant to prevailing market rates for the kind and quality of the services furnished, except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings.

(2) Application for fees. A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application which sets forth (i) the facts supporting the claim that the party is a prevailing party and is eligible to receive an award under this section, (ii) the amount sought, and (iii) an itemized statement from every attorney or expert witness for which fees or expenses are sought stating the actual time expended and the rate at which such fees and other expenses are claimed.

(c) Interest. If the plaintiff appeals an award made pursuant to this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award. Such interest shall run from the date of the award through the day before the date of the affirmance.

(d) Applicability.

(1) Nothing contained in this section shall be construed to alter or modify the provisions of the civil practice law and rules where applicable to actions other than actions as defined by this section.

(2) Nothing contained in this section shall affect or preclude the right of any party to recover fees or other expenses authorized by common law or by any other statute, law or rule.

§ 309. Advisory council on agriculture

(a) There shall be established within the department the advisory council on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate. The department of agriculture and markets shall provide necessary secretariat and support services to the council.

(b) The advisory council on agriculture shall consist of eleven members appointed by the governor with the advice and consent of the senate, selected for their experience and expertise related to areas of council responsibility. At least five members of the council shall be operators of a commercial farm enterprise and at least two members shall be representatives of local governments. The balance of the council shall be comprised of

representatives of business or institutions related to agriculture. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, three shall serve for a term of one year, three shall serve for a term of two years, and three shall serve for a term of three years. Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses. The members of the council shall elect a chairman.

(c) The duties and responsibilities of the advisory council on agriculture as they pertain to agricultural districts shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner in regard to:

(1) The establishment of agricultural districts;

(2) the eight year review of agricultural districts; and

(3) the establishment of and any revision to the land classification system used in connection with the determination of agricultural assessment values.

The commissioner may delegate to the council such additional duties and responsibilities as he deems necessary.

(d) The duties and responsibilities of the advisory council on agriculture shall include, but not be limited to, providing timely advice, comments and recommendations to the commissioner of taxation and finance in regard to the establishment of agricultural assessment values.

(e) The advisory council on agriculture shall advise the commissioner and other state agency heads on state government plans, policies and programs affecting farming and the agricultural industry of this state. Concerned state agencies shall be encouraged to

establish a working relationship with the council and shall fully cooperate with the council in any requests it shall make.

(f) The advisory council on agriculture may ask other individuals to attend its meetings or work with it on an occasional or regular basis provided, however, that it shall invite participation by the chairman of the state soil and water conservation committee and the dean of the New York state college of agriculture and life sciences at Cornell university. The advisory council on agriculture shall set the time and place of its meetings, and shall hold at least one meeting per year.

(g) The advisory council on agriculture shall file a written report to the governor and the legislature by April first each year concerning its activities during the previous year and its program expectations for the succeeding year.

(h) The advisory council on agriculture shall advise the commissioner in regards to whether particular land uses are agricultural in nature.

(i)(1) The advisory council on agriculture shall advise the commissioner in establishing procedures for making annual awards recognizing New York farms, agricultural and food businesses, and institutions that are successful in producing, processing, marketing, and/or promoting New York farm and food products. The commissioner shall coordinate with the commissioner of economic development to determine which department shall make awards in categories that may be similar to those listed in subdivision eighteen-c of section one hundred of the economic development law. These awards shall be given in recognition of exceptional performance and support for New York agriculture by persons, firms and organizations that are principally located

within the state of New York and engaged in the operation of New York state farms, businesses and institutions.

(2) The council may annually nominate and forward such nominations for awards to the commissioner for his or her consideration in the following categories:

(A) Innovative and unique farm products developed for food, beverages, or horticulture;

(B) agri-tourism;

(C) foods or beverages processed or manufactured from New York farm products;

(D) retail food stores;

(E) restaurants and other food service businesses; and

(F) education, health care and residential institutions including, but not limited to, food service in schools, colleges, hospitals, nursing homes, day care and senior centers.

(3) The council may also recommend to the commissioner nominations for awards given pursuant to subdivision eighteen-c of section one hundred of the economic development law.

(4) The commissioner may designate award winners from these nominees at his or her discretion. Current members of the advisory board and their businesses are not eligible as nominees.

(j) Renumbered as (h) by L.1999, c. 290, § 3, eff. July 20, 1999.

§ 309-a. Young farmer advisory board on agriculture

(a) There shall be established within the department the young farmer advisory board on agriculture, to advise and make recommendations to the state agencies on state government plans, policies and programs affecting agriculture, as outlined below, and in such areas as its experience and studies may indicate to be appropriate. The department shall provide necessary secretariat and support services to the board.

(b) The young farmer advisory board on agriculture shall consist of twenty members, ten to be appointed by the governor, with the advice and consent of the senate and assembly, selected for their experience and expertise related to areas of board responsibility. The board shall be comprised of diverse members of the agriculture industry as follows:

(1) Of the twenty members appointed to the board:

(A) One shall be from the department;

(B) one shall be from the empire state development corporation;

(C) one shall be an officer of the Future Farmers of America (FFA);

(D) one shall be an urban farmer;

(E) one shall be from the New York Farm Bureau; and

(F) fifteen shall be from the general public appointed as follows:

Five to be appointed by the temporary president of the senate, five to be appointed by the speaker of the assembly, and five to be appointed by the governor.

(2) Each member shall:

(A) Be interested in the preservation and development of agriculture and preservation of the agricultural way of life in New York;

(B) be under the age of forty-five years old at the beginning of the member's term;

(C) derive at least fifty percent of the member's personal income from farming or agricultural activities in the state;

(D) be a resident of the state; and

(E) be appointed for a term of three years and may serve until their successors are chosen; provided, however, that of the members first appointed, six shall serve for a term of one year, six shall serve for a term of two years and eight shall serve for a term of three years.

(3) Members shall serve without salary but shall be entitled to reimbursement of their ordinary and necessary travel expenses.

(4) The members of the board shall meet quarterly.

(c) The duties and responsibilities of the young farmer advisory board on agriculture shall include, but not be limited to:

(1) Annually electing from its members a chairperson, a vice chairperson, and a secretary of the advisory board at the advisory board's first meeting of the calendar year;

(2) communicating to the general public, the federal government, and the state government the importance of young and beginning farmers to agriculture in the state;

(3) identify issues relating to young and beginning farmers in the state and provide timely advice to the commissioner, the governor and the relevant state agencies, with regard to the promotion of agriculture as a career path and the economic development of young and aspiring farmers;

(4) produce an annual report and provide such report to the governor, the temporary president of the senate and the speaker of the assembly on or before the end of each calendar year. Such report shall identify and prioritize policy issues which affect young and aspiring farmers; and

(5) establish committees, as necessary, to develop projects relating to the aspects of life for young and beginning farmers in the state.

§ 310. Disclosure

(a) When any purchase and sale contract is presented for the sale, purchase, or exchange of real property located partially or wholly within an agricultural district established pursuant to the provisions of this article, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following: "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law."

(1) Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.

(b) Receipt of such disclosure notice shall be recorded on a property transfer report form prescribed by the commissioner of taxation and finance as provided for in section three hundred thirty-three of the real property law.

North Carolina
N.C. Gen. Stat. §§ 106-700 to 106-702

The statutes and Constitution are current through S.L. 2020-97 of the 2020 Regular Session of the General Assembly.

§ 106-700. Legislative determination and declaration of policy

It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land and forestland for the production of food, fiber, and other products. When other land uses extend into agricultural and forest areas, agricultural and forestry operations often become the subject of nuisance suits. As a result, agricultural and forestry operations are sometimes forced to cease. Many others are discouraged from making investments in farm and forest improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural and forestry resources by limiting the circumstances under which an agricultural or forestry operation may be deemed to be a nuisance.

§ 106-701. Right to farm defense; nuisance actions

(a) No nuisance action may be filed against an agricultural or forestry operation unless all of the following apply:

(1) The plaintiff is a legal possessor of the real property affected by the conditions alleged to be a nuisance.

(2) The real property affected by the conditions alleged to be a nuisance is located within one half-mile of the source of the activity or structure alleged to be a nuisance.

(3) The action is filed within one year of the establishment of the agricultural or forestry operation or within one year of the operation undergoing a fundamental change.

(a1) For the purposes of subsection (a) of this section, a fundamental change to the operation does not include any of the following:

(1) A change in ownership or size.

(2) An interruption of farming for a period of no more than three years.

(3) Participation in a government-sponsored agricultural program.

(4) Employment of new technology.

(5) A change in the type of agricultural or forestry product produced.

(a2) Repealed by S.L. 2018-113, § 10(a), eff. June 27, 2018.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

For the purposes of this Article, "forestry operation" shall mean those activities involved in the growing, managing, and harvesting of trees.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural or forestry operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void. Provided, however, that the provisions shall not apply whenever a nuisance results from an agricultural or

forestry operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

(f) In a nuisance action against an agricultural or forestry operation, the court shall award costs and expenses, including reasonable attorneys' fees, to:

(1) The agricultural or forestry operation when the court finds the operation was not a nuisance and the nuisance action was frivolous or malicious; or

(2) The plaintiff when the court finds the agricultural or forestry operation was a nuisance and the operation asserted an affirmative defense in the nuisance action that was frivolous and malicious.

§ 106-702. Limitations on private nuisance actions against agricultural and forestry operations

(a) The compensatory damages that may be awarded to a plaintiff for a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation shall be as follows:

(1) If the nuisance is a permanent nuisance, compensatory damages shall be measured by the reduction in the fair market value of the plaintiff's property caused by the nuisance, but not to exceed the fair market value of the property.

(2) If the nuisance is a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the plaintiff's property caused by the nuisance.

A plaintiff may not recover punitive damages for a private nuisance action where the alleged nuisance emanated from an agricultural or forestry operation that has not been subject to a criminal conviction or a civil enforcement action taken by a State or federal environmental regulatory agency pursuant to a notice of violation for the conduct alleged to be the source of the nuisance within the three years prior to the first act on which the nuisance action is based.

(b) If any plaintiff or plaintiff's successor in interest brings a subsequent private nuisance action against any agricultural or forestry operation, the combined recovery from all such actions shall not exceed the fair market value of the property at issue. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(c) This Article applies to any private nuisance claim brought against any party based on that party's contractual or business relationship with an agricultural or forestry operation.

(d) This Article does not apply to any cause of action brought against an agricultural or forestry operation for negligence, trespass, personal injury, strict liability, or other cause of action for tort liability other than nuisance, nor does this Article prohibit or limit any request for injunctive relief that is otherwise available.

North Dakota
NDCC, 42-04-01 to 05

§ 42-04-01. Agricultural operation defined

As used in this chapter, “agricultural operation” means the science and art of producing plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and includes the preparation of these products for people's use and the disposal of these products by marketing or other means. The term includes livestock auction markets and horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm produ.

§ 42-04-02. Agricultural operation deemed not nuisance

An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began, except that the provisions of this section shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation.

§ 42-04-03. Recovery for water pollution, condition, or overflow

The provisions of section 42-04-02 shall not affect or defeat the right of any person to recover damages for any injury or damage sustained by the person on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of lands of any such person.

§ 42-04-04. Effect on local ordinances

Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this chapter is void, except that the provisions of this section shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation or from an agricultural operation located within the corporate limits of any city as of July 1, 1981.

§ 42-04-05. Effect on contracts

This chapter shall not be construed to invalidate any contracts made prior to the enactment of this chapter, but, insofar as contracts are concerned, it is only applicable to contracts and agreements to be made on or after July 1, 1981.ction.

Oregon
Or. Rev. Stat. §§ 30.930 to 30.947

Current through laws enacted in the 2020 Regular Session of the 80th Legislative Assembly.

30.930. Definitions

As used in ORS 30.930 to 30.947:

(1) "Farm" means any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products or the propagation and raising of nursery stock.

(2) "Farming practice" means a mode of operation on a farm that:

(A) Is or may be used on a farm of a similar nature;

(B) is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;

(C) is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;

(D) complies with applicable laws; and

(E) is done in a reasonable and prudent manner.

(3) "Forestland" means land that is used for the growing and harvesting of forest tree species.

(4) "Forest practice" means a mode of operation on forestland that:

(A) Is or may be used on forestland of similar nature;

(B) is a generally accepted, reasonable and prudent method of complying with ORS 527.610 to 527.770 and the rules adopted pursuant thereto;

(C) is or may become a generally accepted, reasonable and prudent method in conjunction with forestland;

(D) complies with applicable laws;

(E) is done in a reasonable and prudent manner; and

(F) May include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control.

(5) "Pesticide" has the meaning given that term in ORS 634.006.

30.931. Transport or movement of equipment, device, vehicle or livestock as farming or forest practice

Notwithstanding ORS 30.930, if the activities are conducted in a reasonable and prudent manner, the transport or movement of any equipment, device or vehicle used in conjunction with a farming practice or a forest practice on a public road or movement of livestock on a public road is a farming or forest practice under ORS 30.930 to 30.947.

30.932. "Nuisance" or "trespass" defined

As used in ORS 30.930 to 30.947, "nuisance" or "trespass" includes but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances.

30.933. Legislative findings; policy

(a) The Legislative Assembly finds that:

(1) Farming and forest practices are critical to the economic welfare of this state.

(2) The expansion of residential and urban uses on and near lands zoned or used for agriculture or production of forest products may give rise to conflicts between resource and nonresource activities.

(3) In the interest of the continued welfare of the state, farming and forest practices must be protected from legal actions that may be intended to limit, or have the effect of limiting, farming and forest practices.

(b) The Legislative Assembly declares that it is the policy of this state that:

(1) Farming practices on lands zoned for farm use must be protected.

(2) Forest practices on lands zoned for the production of forest products must be protected.

(3) Persons who locate on or near an area zoned for farm or forest use must accept the conditions commonly associated with living in that particular setting.

(4) Certain private rights of action and the authority of local governments and special districts to declare farming and forest practices to be nuisances or trespass must be limited because such claims for relief and local government ordinances are inconsistent with land use policies, including policies set forth in ORS 215.243, and have adverse effects on the continuation of farming and forest practices and the full use of the resource base of this state.

30.934. Local laws that make forest practice a nuisance or trespass; exceptions

(a) Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a forest practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.

(b) Subsection (a) of this section does not apply to:

(1) City rules, regulations or ordinances adopted in accordance with ORS 527.722; or

(2) Any forest practice conducted in violation of a solar energy easement that complies with ORS 105.880 to 105.890.

30.935. Local laws that make farm practice a nuisance or trespass

Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a farm practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to that farm practice for which no action or claim is allowed under ORS 30.936 or 30.937.

30.936. Immunity from private action based on farming or forest practice on certain lands; exceptions

(a) No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(b) Subsection (a) of this section shall not apply to a right of action or claim for relief for:

(1) Damage to commercial agricultural products; or

(2) death or serious physical injury as defined in ORS 161.015.

(c) Subsection (a) of this section applies regardless of whether the farming or forest practice has undergone any change or interruption.

30.937. Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use; exceptions

(a) No farming or forest practice allowed as a preexisting nonconforming use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(b) Subsection (a) of this section shall not apply to a right of action or claim for relief for:

(1) Damage to commercial agricultural products; or

(2) death or serious physical injury as defined in ORS 161.015.

(c) Subsection (a) of this section applies only where a farming or forest practice existed before the conflicting nonfarm or nonforest use of real property that gave rise to the right of action or claim for relief.

(d) Subsection (a) of this section applies only where a farming or forest practice has not significantly increased in size or intensity from November 4, 1993, or the date on which the applicable urban growth boundary is changed to include the subject farming or forest practice within its limits, whichever is later.

30.938. Attorney fees and costs

In any action or claim for relief alleging nuisance or trespass and arising from a practice that is alleged by either party to be a farming or forest practice, the prevailing party shall be entitled to judgment for reasonable attorney fees and costs incurred at trial and on appeal.

30.939. Pesticide uses considered farming or forest practice

(a) Notwithstanding ORS 30.930 (2), the use of a pesticide shall be considered to be a farming practice for purposes of ORS 30.930 to 30.947, if the use of the pesticide:

(1) Is or may be used on a farm of a similar nature;

(2) is a reasonable and prudent method for the operation of the farm to obtain a profit in money;

(3) is or may become customarily utilized in conjunction with farm use;

(4) complies with applicable laws; and

(5) is done in a reasonable and prudent manner.

(b) Notwithstanding ORS 30.930 (4), the use of a pesticide shall be considered to be a forest practice for purposes of ORS 30.930 to 30.947, if the use of the pesticide:

(1) Is or may be used on forestland of a similar nature;

(2) is a reasonable and prudent method of complying with ORS 527.610 to 527.770;

(3) is or may become customarily utilized in conjunction with forestland;

(4) complies with applicable laws;

(5) is done in a reasonable and prudent manner; and

(6) includes, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control.

30.940. Other remedies

The provisions of ORS 30.930 to 30.947 shall not impair the right of any person or governmental body to pursue any remedy authorized by law that concerns matters other than a nuisance or trespass.

30.942. Rules

(a) The State Department of Agriculture may adopt rules to implement the provisions of ORS 30.930 to 30.947.

(b) The State Forestry Department may adopt rules to implement the provisions of ORS 30.930 to 30.947.

30.943. Investigation of complaints based on farming or forest practice

The Department of Environmental Quality, Department of State Lands, State Department of Agriculture or State Forestry Department is not required to investigate complaints if the agency has reason to believe that the complaint is based on practices protected by ORS 30.930 or 30.947.

30.947. Siting of destination resorts or other nonfarm or nonforest uses

The fact that a comprehensive plan and implementing ordinances allow the siting of destination resorts or other nonfarm or nonforest uses as provided in ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, does not in any way affect the provisions of ORS 30.930 to 30.947.

Ohio
R.C. § 939.03

939.03 Operation and management plans; nuisances involving agricultural pollution

(A) A person who owns or operates agricultural land or an animal feeding operation may develop and operate under an operation and management plan approved by the director of agriculture or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code.

(B) A person who wishes to make a complaint regarding nuisances involving agricultural pollution may do so orally or by submitting a written, signed, and dated complaint to the director or to the director's designee. After receiving an oral complaint, the director or the director's designee may cause an investigation to be conducted to determine whether agricultural pollution has occurred or is imminent. After receiving a written, signed, and dated complaint, the director or the director's designee shall cause such an investigation to be conducted.

(C) In a private civil action for nuisances involving agricultural pollution, it is an affirmative defense if the person owning, operating, or otherwise responsible for agricultural land or an animal feeding operation is operating under and in substantial compliance with an approved operation and management plan developed under division (A) of this section, with an operation and management plan developed by the director or the director's designee under section 939.02 of the Revised Code or by the supervisors of the applicable soil and water conservation district under section 940.06 of the Revised Code, or with an operation and management plan required under division (A)(2) of section 939.02 of the Revised Code. Nothing in this section is in derogation of the authority granted to the director in division (E) of section 939.02 and in section 939.07 of the Revised Code.

Oklahoma

50 Okl.St.Ann. § 1.1
§ 1.1. Agricultural activities as nuisance

A. As used in this section:

1. "Agricultural activities" includes, but is not limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, aquaculture, grain, mint, hay, dairy products and forestry activities. "Agricultural activities" also includes improvements or expansion to the activities provided for in this paragraph including, but not limited to, new technology, pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animal or aquatic life, for storage of produce or feed, or for storage or maintenance of implements. If the expansion is part of the same operating facility, the expansion need not be contiguous;

2. "Farmland" includes, but is not limited to, land devoted primarily to production of livestock or agricultural commodities; and

3. "Forestry activity" means any activity associated with the reforesting, growing, managing, protecting and harvesting of timber, wood and forest products including, but not limited to, forestry buildings and structures.

B. Agricultural activities conducted on farm or ranch land, if consistent with good agricultural practices and established prior to nearby nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

If that agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

C. No action for nuisance shall be brought against agricultural activities on farm or ranch land which has lawfully been in operation for two (2) years or more prior to the date of bringing the action. The established date of operation is the date on which an agricultural activity on farm or ranch land commenced. The established date of operation for each change is not a separately and independently established date of operation and commencement of the expanded activity does not divest the farm or ranch of a previously established date of operation if:

1. The physical facilities of the farm or ranch are subsequently expanded or new technology adopted;

2. The farming or ranching is interrupted for no more than three (3) years; or

3. The farm or ranch participates in a government-sponsored agricultural program.

D. In any action for nuisance brought against agricultural activities on farm or ranch land pursuant to this section:

1. The court or jury shall determine the amount of noneconomic damages separately from the amount of compensation for all other damages; and

2. Noneconomic damages awarded to a plaintiff shall not exceed three times the amount of compensatory damages or Two Hundred Fifty Thousand Dollars ($250,000.00), whichever amount is greater.

E. In any action for nuisance in which agricultural activities are alleged to be a nuisance, and which action is found to be frivolous or malicious by the court, the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in connection with defending the action, together with reasonable attorney fees.

F. This section does not relieve agricultural activities of the duty to abide by state and federal laws, including, but not limited to, the Oklahoma Concentrated Animal Feeding Operations Act1 and the Oklahoma Registered Poultry Feeding Operations Act.

Pennsylvania
3 Pa. Cons. Stat. §§ 951 to 957

Current through 2020 Regular Session Act 95.

§ 951. Legislative policy

It is the declared policy of the Commonwealth to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and ordinances. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this act to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.

§ 952. Definitions

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

(1) "Agricultural commodity." Any of the following transported or intended to be transported in commerce:

(A) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products.

(B) Livestock and the products of livestock.

(C) Ranch-raised fur-bearing animals and the products of ranch-raised fur-bearing animals.

(D) The products of poultry or bee raising.

(E) Forestry and forestry products.

(F) Any products raised or produced on farms intended for human consumption and the processed or manufactured products of such products intended for human consumption.

(2) "Municipality." A county, city, borough, incorporated town, township or a general purpose unit of government as established by the act of April 13, 1972 (P.L. 184, No. 62), 1 known as the "Home Rule Charter and Optional Plans Law."

(3) "Normal agricultural operation." The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:

(A) Not less than ten contiguous acres in area; or

(B) less than ten contiguous acres in area but has an anticipated yearly gross income of at least $10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items

of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134), 2 known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

§ 953. Limitation on local ordinances

(a) Every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.

(b) Direct commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions. Such direct sales shall be authorized without regard to the 50% limitation under circumstances of crop failure due to reasons beyond the control of the landowner.

§ 954. Limitation on public nuisances

(a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or

more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L. 12, No. 6),1 known as the Nutrient Management Act, and is otherwise in compliance therewith: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.

(b) The provisions of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof.

§ 955. Water damages

The provisions of section 41 shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by him or it on account of any pollution of, or change in condition of, the waters of any stream or on account of any flooding of lands to any such person, firm or corporation.

§ 956. Saving clause

(a) This act shall not be construed to invalidate any contract made prior to its effective date nor shall it be construed to apply to any suit brought prior to its effective date.

(b) The provisions of this act shall not affect or defeat the intent of any federal, state or local statute or governmental regulation except nuisance ordinances as they apply to any normal agricultural operation.

§ 957. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

South Carolina
Code 1976 § 46-45-10 to 80

§ 46-45-10. Legislative findings.
The General Assembly finds that:
(1) The policy of the State is to conserve, protect, and encourage the development and improvement of its agricultural land and facilities for the production of food and other agricultural products.
(2) When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and as a result (a) agricultural facilities are sometimes forced to cease operations, and (b) many persons are discouraged from making investments in farm improvements or adopting new technology or methods.
(3) This chapter is enacted to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural facilities and operations may be considered a nuisance.
(4) The purpose of this chapter is to lessen the loss of farmland caused by common law nuisance actions which arise when nonagricultural land uses expand into agricultural areas. This purpose is justified by the stated social desire of preserving and encouraging agricultural production.
(5) With the exception of new swine operations and new slaughterhouse operations, in the interest of homeland security and in order to secure the availability, quality, and safety of food produced in South Carolina, it is the intent of the General Assembly that state law and the regulations of the Department of Health and Environmental Control pre-empt the entire field of and constitute a complete and integrated regulatory plan for agricultural facilities and agricultural operations as defined in Section 46-45-20, thereby precluding a county from passing an ordinance that is not identical to the state provisions.

§ 46-45-20. Definitions.

(A) For purposes of this chapter, "agricultural facility" includes, but is not limited to, any land, building, structure, pond, impoundment appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, trees, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, or products which are used in commercial aquaculture.
(B) For purposes of this chapter "agricultural operation" means:
(1) the plowing, tilling, or preparation of soil at the agricultural facility;
(2) the planting, growing, fertilizing, or harvesting of crops, ornamental horticulture, floriculture, and turf grasses;
(3) the application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, livestock, animals, or poultry;
(4) the breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes;

(5) the production and keeping of the honeybees, the production of honeybee products, and honeybee processing facilities;

(6) the production, processing, or packaging of eggs or egg products;

(7) the manufacturing of feed for poultry or livestock;

(8) the rotation of crops;

(9) commercial aquaculture;

(10) the application of existing, changed, or new technology, practices, processes, or procedures to an agricultural operation;

(11) the operation of a roadside market; and

(12) silviculture.

(C) For purposes of this chapter "new swine operations" means: porcine production operations not in existence on June 30, 2006.

(D) For purposes of this chapter, "new slaughterhouse operations" means agricultural operations that:

(1) are established after this chapter's effective date; and

(2) slaughter or process more than two hundred million pounds of livestock, hogs, aquatic animals, equine, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes.

(3) a new slaughterhouse operation does not include a slaughterhouse located within the corporate limits of a city that relocates within that same county.

§ 46-45-40. Established date of operation.

For the purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced operation. If the physical facilities of the agricultural operation are expanded subsequently or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation of a previously established date of operation.

§ 46-45-50. Liability for pollution and flooding.

The provisions of Section 46-45-70 do not affect or defeat the right of a person to recover damages for any injuries or damages sustained by him because of pollution of, or change in condition of, the waters of a stream or because of an overflow on his lands.

§ 46-45-60. Local ordinances to contrary null and void.

(A) Notwithstanding any local law or ordinance, an agricultural operation or facility is considered to be in compliance with the local law or ordinance if the operation or facility would otherwise comply with state law or regulations governing the facility or operation. With the exception of new swine operations and new slaughterhouse operations, to the extent an ordinance of a unit of local government:

(1) attempts to regulate the licensing or operation of an agricultural facility in any manner that is not identical to the laws of this State and regulations of the Department of Health and Environmental Control and amendments thereto;

(2) makes the operation of an agricultural facility or an agricultural operation at an agricultural facility a nuisance or providing for abatement as a nuisance in derogation of this chapter; or

(3) is not identical to state law and regulations governing agricultural operations or agricultural facilities, is null and void. The provisions of this section do not apply whenever a nuisance results from the negligent, illegal, or improper operation of an agricultural facility. The provisions of this section do not apply to an agricultural facility or agricultural operation at an agricultural facility located within the corporate limits of a city.

(B) The provisions of this section shall not preclude any right a county may have to determine whether an agricultural use is a permitted use under the county's land use and zoning authority; provided, if an agricultural facility or an agricultural operation is a permitted use, or is approved as a use pursuant to any county conditional use, special exception or similar county procedure, county development standards, or other ordinances that are not identical with the laws of this State or the regulations of the Department of Health and Environmental Control are null and void to the extent they (a) apply to agricultural operations or facilities otherwise permitted by this chapter, the laws of this State, and the regulations of the Department of Health and Environmental Control, and (b) are not identical to this chapter, the laws of this State, and the regulations of the Department of Health and Environmental Control.

§ 46-45-70. Established agricultural facility as nuisance; changed conditions in surrounding locality.

No established agricultural facility or any agricultural operation at an established agricultural facility is or may become a nuisance, private or public, by any changed conditions in or about the locality of the facility or operation. This section does not apply whenever a nuisance results from the negligent, improper, or illegal operation of an agricultural facility or operation.

§ 46-45-80. Setback distances; waiver.

Any setback distances given in R. 61-43, Standards for Permitting of Agricultural Animal Facilities, are minimum siting requirements as established by the Department of Health and Environmental Control. As long as the established setbacks are achieved, the department may not require additional setback distances. Such distances from property lines or residences may be waived or reduced by written consent of the adjoining property owners. All animal facilities affected by these setback provisions must have an evergreen buffer between the facility and the affected residence as established by DHEC unless otherwise agreed to in writing by the adjoining landowners.

South Dakota
SDCL § 21-10-25.1 to .6

21-10-25.1. State policy to protect agricultural operations from nuisance suits

It is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The Legislature finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of §§ 21-10-25.1 to 21-10-25.6, inclusive, to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

21-10-25.2. Certain agricultural operations protected--Poultry or livestock operations--Protected status transferable

No agricultural operation or any of its appurtenances may be deemed to be a nuisance, private or public, by any changed conditions in the locality of the operation or its appurtenances after the facility has been in operation for more than one year, if the facility was not a nuisance at the time the operation began. Any agricultural operation protected pursuant to the provisions of this section may reasonably expand its operation in terms of acres or animal units without losing its protected status if all county, municipal, state, and federal environmental codes, laws, or regulations are met by the agricultural operation. The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of farming or by diminishing the size of the operation. The provisions of this section do not apply if a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

21-10-25.3. Agricultural operation defined

As used in §§ 21-10-25.1 to 21-10-25.6, inclusive, the term “agricultural operation and its appurtenances” includes any facility used in the production or processing for commercial purposes of crops, timber, livestock, swine, poultry, livestock products, swine products, or poultry products.

21-10-25.4. Damages due to water pollution or land overflow not affected by protected status

The provisions of §§ 21-10-25.1 and 21-10-25.2 do not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries sustained by it as a result of the pollution or other change in the quantity or quality of water used by that person,

firm, or corporation for private or commercial purposes, or as a result of any overflow of land owned by or in the possession of any such person, firm, or corporation.

21-10-25.5. Agricultural operation within municipality not protected

The provisions of §§ 21-10-25.1 and 21-10-25.2 do not apply to any nuisance resulting from an agricultural operation located within the limits of any incorporated municipality on January 1, 1991.

21-10-25.6. Frivolous action against agricultural operation--Costs and expenses recoverable

In any nuisance action brought in which an agricultural operation is alleged to be a nuisance, and which is found to be frivolous by the court, the defendant shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in his behalf in connection with the defense of such action, together with a reasonable amount for attorney's fees.

Rhode Island
R.I. Gen. Laws §§ 2-23-1 to 2-23-7

Legislation is current through Chapter 79 of the 2020 2nd Regular Session.

§ 2-23-1. Short title

This chapter shall be known as "The Rhode Island Right to Farm Act".

§ 2-23-2. Legislative findings

The general assembly finds:

(1) That agricultural operations are valuable to the state's economy and the general welfare of the state's people;

(2) that agricultural operations are adversely affected by the random encroachment of urban land uses throughout rural areas of the state;

(3) that, as one result of this random encroachment, conflicts have arisen between traditional agricultural land uses and urban land uses; and

(4) that conflicts between agricultural and urban land uses threaten to force the abandonment of agricultural operations and the conversion of agricultural resources to non-agricultural land uses, whereby these resources are permanently lost to the economy and the human and physical environments of the state.

§ 2-23-3. Declaration of policy

The general assembly declares that it is the policy of the state to promote an environment in which agricultural operations are safeguarded against nuisance actions arising out of conflicts between agricultural operations and urban land uses.

§ 2-23-4. "Agricultural operations" defined

(a) As used in this chapter, "agricultural operations" includes any commercial enterprise that has as its primary purpose horticulture, viticulture, viniculture, floriculture, forestry, stabling of horses, dairy farming, or aquaculture, or the raising of livestock, including for the production of fiber, furbearing animals, poultry, or bees, and all such other operations, uses, and activities as the director, in consultation with the chief of division of agriculture, may determine to be agriculture, or an agricultural activity, use or operation. The mixed-use of farms and farmlands for other forms of enterprise including, but not limited to, the display of antique vehicles and equipment, retail sales, tours, classes, petting, feeding and viewing of animals, hay rides, crop mazes, festivals and other special events are hereby recognized as a valuable and viable means of contributing to the preservation of agriculture.

(b) Nothing herein shall be deemed to restrict, limit, or prohibit nonagricultural operations from being undertaken on a farm except as otherwise restricted, regulated, limited, or prohibited by law, regulation, or ordinance or to affect the rights of persons to engage in other lawful nonagricultural enterprises on farms; provided, however, that the protections and rights established by this chapter shall not apply to such nonagricultural activities, uses or operations.

§ 2-23-5. Nuisance actions against agricultural operations

Currentness.

(1) No agricultural operation, as defined in this chapter is found to be a public or private nuisance, due to alleged objectionable:

(A) Odor from livestock, manure, fertilizer, or feed, occasioned by generally accepted farming procedures;

(B) noise from livestock or farm equipment used in normal, generally accepted farming procedures;

(C) dust created during plowing or cultivation operations;

(D) use of pesticides, rodenticides, insecticides, herbicides, or fungicides.

This provision pertains only to nuisance actions under chapter 1 of title 10.

(2) In addition, no city or town ordinance adopted under § 23-19.2-1 shall be enforced against any agricultural operation as defined in this chapter. In addition, no rule or regulation of the department of transportation shall be enforced against any agricultural operation to prevent it from placing a seasonal directional sign or display on the state's right-of-way, on the condition that that sign or display conforms with the local zoning ordinance, and that sign or display is promptly removed by the agricultural operation upon the conclusion of the season for which said sign or display was placed.

§ 2-23-6. Negligence actions; pesticide use not affected

The provisions of this chapter do not apply to agricultural operations conducted in a malicious or negligent manner, or to agricultural operations conducted in violation of federal or state law controlling the use of pesticides, rodenticides, insecticides, herbicides, or fungicides.

§ 2-23-7. Severability

If any provision of this chapter, or determination made under this chapter, or application of this chapter to any person, agency, or circumstances is held invalid by a court of competent jurisdiction, the remainder of this chapter and its application to any person, agency, or circumstances shall not be affected by the invalidity. The invalidity of any section or sections of this chapter shall not affect the remainder of this chapter.

Tennessee
West's Tenn. Code Ann. §§43-26-101 to 43-26-104.

§ 43-26-101. Short title

This chapter shall be known and may be cited as the "Tennessee Right to Farm Act."

§ 43-26-102. Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Farm" means the land, buildings, and machinery used in the commercial production of farm products and nursery stock as defined in § 70-8-303;

(2) "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of farm products or nursery stock as defined in § 70-8-303, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; the employment and use of labor; marketing of farm products in conjunction with the production of farm products thereof; and any other form of agriculture as defined in § 43-1-113; and

(3) "Farm product" means those plants and animals useful to man and includes, but is not limited to, forages and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; hemp, as defined in § 43-27-101; trees; fish; apiaries; equine and other similar products; or any other product that incorporates the use of food, feed, fiber or fur.

(4) Deleted by 2019 Pub.Acts, c. 87, § 6, eff. April 4, 2019.

§ 43-26-103. Farming presumed not to be a nuisance; industrial hemp, annual licensure, fees, and rules

(a) It is a rebuttable presumption that a farm or farm operation is not a public or private nuisance. The presumption created by this subsection (a) may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that either:

(1) The farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or

(2) The farm or farm operation alleged to cause the nuisance does not comply with any applicable statute or rule, including without limitation statutes and rules administered by the department of agriculture or the department of environment and conservation.

(b) Deleted by 2019 Pub.Acts, c. 87, § 7, eff. April 4, 2019.

(c) Deleted by 2019 Pub.Acts, c. 87, § 7, eff. April 4, 2019.

(d) Deleted by 2019 Pub.Acts, c. 87, § 7, eff. April 4, 2019.

(e) Deleted by 2019 Pub.Acts, c. 87, § 7, eff. April 4, 2019.

§ 43-26-104. Applicability of chapter

This chapter does not affect any rights or duties that exist or mature under title 44, chapter 18. This chapter shall be broadly construed to effectuate its purposes**.**

Texas
Tex. Agric. Code Ann. §§ 251.001 to 251.006

Current through the end of the 2019 Regular Session of the 86th Legislature.

§ 251.001. Policy

It is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or considered to be a nuisance.

§ 251.002. Definitions

In this chapter:

(1) "Agricultural operation" includes the following activities:

(A) Cultivating the soil;

(B) producing crops for human food, animal feed, planting seed, or fiber;

(C) floriculture;

(D) viticulture;

(E) horticulture;

(F) silviculture;

(G) wildlife management;

(H) raising or keeping livestock or poultry; and

(I) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) "Governmental requirement" includes any rule, regulation, ordinance, zoning, or other requirement or restriction enacted or promulgated by a county, city, or other

municipal corporation that has the power to enact or promulgate the requirement or restriction.

§ 251.003. Established Date of Operation

For purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is a separate and independent established date of operation established as of the date of commencement of the expanded operation, and the commencement of expanded operation does not divest the agricultural operation of a previously established date of operation.

§ 251.004. Nuisance Actions

(a) No nuisance action may be brought against an agricultural operation that has lawfully been in operation for one year or more prior to the date on which the action is brought, if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation. This subsection does not restrict or impede the authority of this state to protect the public health, safety, and welfare or the authority of a municipality to enforce state law.

(b) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) of this section is liable to the agricultural operator for all costs and expenses incurred in defense of the action,

including but not limited to attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense.

(c) This section does not affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of an agricultural operation.

§ 251.005. Effect of Governmental Requirements

(a) For purposes of this section, the effective date of a governmental requirement is the date on which the requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation. The recodification of a municipal ordinance does not change the original effective date to the extent of the original requirements.

(b) A governmental requirement of a political subdivision of the state other than a city:

(1) Applies to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;

(2) does not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement; and

(3) applies to an agricultural operation if the governmental requirement was in effect and was applicable to the operation prior to the effective date of this chapter.

(c) A governmental requirement of a city does not apply to any agricultural operation situated outside the corporate boundaries of the city on the effective date of this chapter.

If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of the city do not apply to the agricultural operation unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of:

(1) Explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, or traffic hazards; or

(2) discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code.

A governmental requirement may be imposed under Subsection (c) only after the governing body of the city makes findings by resolution that the requirement is necessary to protect public health. Before making findings as to the necessity of the requirement, the governing body of the city must use the services of the city health officer or employ a consultant to prepare a report to identify the health hazards related to agricultural operations and determine the necessity of regulation and manner in which agricultural operations should be regulated.

A governmental requirement of a city relating to the restraint of a dog that would apply to an agricultural operation under Subsection (c) does not apply to a dog used to protect livestock on property controlled by the property owner while the dog is being used on such property for that purpose.

(d) This section shall be construed to maintain, to the limited degree set forth in this section, the authority of a political subdivision under prior law over nonconforming uses but may not be construed to expand that authority.

(e) A governmental requirement of a political subdivision of the state does not apply to conduct described by Section 42.09(f), Penal Code, on an agricultural operation.

§ 251.006. Agricultural Improvements

(a) An owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute or a governmental requirement in effect at the time the improvement is constructed. Such an improvement does not constitute a nuisance.

(b) This section does not apply to an improvement that obstructs the flow of water, light, or air to other land. This section does not prevent the enforcement of a statute or governmental requirement to protect public health or safety.

(c) In this section:

(1) "Agricultural land" includes any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Tax Code.

(2) "Agricultural improvement" includes pens, barns, fences, and other improvements designed for the sheltering, restriction, or feeding of animal or aquatic life, for storage of produce or feed, or for storage or maintenance of implements.

Utah

U.C.A. 1953 § 4-44-101 to 102. § 4-44-201 to 202

§ 4-44-101. Title
This chapter is known as "Agricultural Operations Nuisances Act."

§ 4-44-102. Definitions
As used in this chapter:
(1)(a) "Agricultural operation" means an activity engaged in the production for commercial purposes of crops, orchards, livestock, poultry, aquaculture, livestock products, or poultry products and the facilities, equipment, and property used to facilitate the activity.
(b) "Agricultural operation" includes an agricultural protection area established under Title 17, Chapter 41, Agriculture, Industrial, or Critical Infrastructure Materials Protection Areas.
(2) "Fundamental change to the operation" does not include:
(a) a change in ownership or size;
(b) an interruption of farming for a period of no more than three years;
(c) participation in a government-sponsored agricultural program;
(d) employment of new technology; or
(e) a change in the type of agricultural product produced.
(3) "Nuisance" means anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

§ 4-44-201. Defenses in nuisance actions
(1) It is a defense in a civil action for nuisance against an agricultural operation that:
(a) the plaintiff is not a legal possessor of the real property affected by the conditions alleged to be the nuisance;
(b) the real property affected by the conditions alleged to be the nuisance is located outside one-half mile of the source of the activity or structure alleged to be the nuisance; or
(c) the action is filed more than one year after:
(i) the establishment of the agricultural operation; or
(ii) the agricultural operation undergoes a fundamental change.
(2) This section may not be construed to invalidate any contract made before May 14, 2019.
(3) In a nuisance action against an agricultural operation, the court shall award costs and expenses, including reasonable attorney fees, to:
(a) the agricultural operation when the court finds the agricultural operation is not a nuisance and the nuisance action is frivolous or malicious; or
(b) the plaintiff when the court finds the agricultural operation is a nuisance and the agricultural operation asserts an affirmative defense in the nuisance action that is frivolous and malicious.

(4) A person who knowingly violates a judgment or order abating or otherwise enjoining a nuisance is guilty of a class B misdemeanor.

§ 4-44-202. Application of other statutes--Ordinances

(1)(a) In a civil action for nuisance or a criminal action for public nuisance under Section 76-10-803, it is a defense if the action involves agricultural operations and those agricultural operations are conducted in the normal and ordinary course of agricultural operations or conducted in accordance with sound agricultural practices.

(b) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices.

(2) If the agricultural operations occur in an agricultural protection area, as defined in Section 17-41-101, Section 17-41-403 governs the action for nuisance.

(3)(a) An ordinance of a political subdivision that would make the operation of an agricultural operation or appurtenances to an agricultural operation a nuisance or that provide for abatement of the agricultural operation as a nuisance does not apply to an agricultural operation that is conducted in the normal and ordinary course of agricultural operations or conducted in accordance with sound agricultural practices.

(b) An agricultural operation undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices.

Vermont
Vt. Stat. Ann. tit. 12, §§ 5751 to 5754

The statutes are current through Acts 1-159, 161-169, 171-179, M-1-M-12 of the Adjourned Session of the 2019-2020 Vermont General Assembly (2020).

§ 5751. Legislative findings and purpose

The General Assembly finds that agricultural production is a major contributor to the State's economy; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of existing and the initiation of new agricultural activities preserve the landscape and environmental resources of the State, contribute to the increase of tourism, and further the economic welfare and self-sufficiency of the people of the State; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the State. In order for the agricultural industry to survive in this State, farms will likely change, adopt new technologies, and diversify into new products, which for some farms will mean increasing in size. The General Assembly finds that agricultural activities are potentially subject to lawsuits based on the theory of nuisance, and that these suits encourage and could force the premature removal of the farm lands and other farm resources from agricultural use. It is the purpose of this chapter to protect reasonable agricultural activities conducted on the farm from nuisance lawsuits.

§ 5752. Definitions

For the purpose of this chapter: "Agricultural activity" means, but is not limited to:

(1) The cultivation or other use of land for producing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; the raising, feeding, or management of

domestic animals as defined in 6 V.S.A. § 1151 or bees; the operation of greenhouses; the production of maple syrup; the on-site storage, preparation, and sale of agricultural products principally produced on the farm; and the on-site production of fuel or power from agricultural products or wastes principally produced on the farm;

(2) the preparation, tilling, fertilization, planting, protection, irrigation, and harvesting of crops; the composting of material principally produced by the farm or to be used at least in part on the farm; the ditching and subsurface drainage of farm fields and the construction of farm ponds; the handling of livestock wastes and byproducts; and the on-site storage and application of agricultural inputs, including lime, fertilizer, and pesticides.

§ 5753. Agricultural activities; protection from nuisance lawsuits

(a)(1) Agricultural activities shall be entitled to a rebuttable presumption that the activity does not constitute a nuisance if the agricultural activity meets all of the following conditions:

(A) It is conducted in conformity with federal, state, and local laws and regulations (including required agricultural practices);

(B) it is consistent with good agricultural practices;

(C) it is established prior to surrounding nonagricultural activities; and

(D) it has not significantly changed since the commencement of the prior surrounding nonagricultural activity.

(2) The presumption that the agricultural activity does not constitute a nuisance may be rebutted by a showing that the activity has a substantial adverse effect on health,

safety, or welfare, or has a noxious and significant interference with the use and enjoyment of the neighboring property.

(b) Nothing in this section shall be construed to limit the authority of State or local boards of health to abate nuisances affecting the public health.

§ 5754. Severability

If any provision of this chapter is held invalid, the invalidity does not affect other provisions of this chapter that can be given effect without the invalid provision, and for this purpose, the provisions of this chapter are severable.

Virginia
Va. Code Ann. §§ 3.2-300 to 3.2-302

The statutes and Constitution are current through the End of 2020 Regular Session.

§ 3.2-300. Definitions

As used in this chapter, unless the context requires a different meaning:

(1) "Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

(2) "Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

§ 3.2-301. Right to farm; restrictive ordinances

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no locality shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Localities may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a

relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

§ 3.2-302. When agricultural operations do not constitute nuisance

(a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in substantial compliance with any applicable best management practices in use by the operation at the time of the alleged nuisance and with any applicable laws and regulations of the Commonwealth relevant to the alleged nuisance. No action shall be brought by any person against any agricultural operation the existence of which was known or reasonably knowable when that person's use or occupancy of his property began.

The provisions of this section shall apply to any nuisance claim brought against any party that has a business relationship with the agricultural operation that is the subject of the alleged nuisance. The provisions of this section shall not apply to any action for negligence or any tort other than a nuisance.

For the purposes of this subsection, “substantial compliance” means a level of compliance with applicable best management practices, laws, or regulations such that any identified deficiency did not cause a nuisance that created a significant risk to human health or safety. Agricultural operations shall be presumed to be in substantial compliance absent a contrary showing.

(b) The provisions of subsection (a) shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by them on account of any

pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person.

(c) Only persons with an ownership interest in the property allegedly affected by the nuisance may bring an action for private nuisance. Any compensatory damages awarded to any person for a private nuisance action not otherwise prohibited by this section, where the alleged nuisance emanated from an agricultural operation, shall be measured as follows:

(1) For a permanent nuisance, by the reduction in fair market value of the person's property caused by the nuisance, but not to exceed the fair market value of the property; or

(2) or a temporary nuisance, by the diminution of the fair rental value of the person's property.

The combined recovery from multiple actions for private nuisance brought against any agricultural operation by any person or that person's successor in interest shall not exceed the fair market value of the subject property, regardless of whether any subsequent action is brought against a different defendant than any preceding action.

(d) Notwithstanding subsection (c), for any nuisance claim not otherwise prohibited by this section, nothing herein shall limit any recovery allowed under common law for physical or mental injuries that arise from such alleged nuisance and are shown by objective and documented medical evidence to have endangered life or health.

(e) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its

appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void.

Washington
Wash. Rev. Code §§ 7.48.300 to 7.48.320

Current with all legislation from the 2020 Regular Session of the Washington Legislature.

7.48.300. Agricultural activities and forest practices; legislative finding and purpose

The legislature finds that agricultural activities conducted on farmland and forest practices in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses and timber production. It is therefore the purpose of RCW 7.48.300 through 7.48.310 and 7.48.905 to provide that agricultural activities conducted on farmland and forest practices be protected from nuisance lawsuits.

7.48.305. Agricultural activities and forest practices; presumed reasonable and not a nuisance; exception; damages

(a) Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety.

(b) Agricultural activities and forest practices undertaken in conformity with all applicable laws and rules are presumed to be good agricultural and forest practices not adversely affecting the public health and safety for purposes of this section and RCW 7.48.300. An agricultural activity that is in conformity with such laws and rules shall not be restricted as to the hours of the day or day or days of the week during which it may be conducted.

(c) The act of owning land upon which a growing crop of trees is located, even if the tree growth is being managed passively and even if the owner does not indicate the land's status as a working forest, is considered to be a forest practice occurring on the land if the crop of trees is located on land that is capable of supporting a merchantable stand of timber that is not being actively used for a use that is incompatible with timber growing. If the growing of trees has been established prior to surrounding nonforestry activities, then the act of tree growth is considered a necessary part of any other subsequent stages of forest practices necessary to bring a crop of trees from its planting to final harvest and is included in the provisions of this section.

(d) Nothing in this section shall affect or impair any right to sue for damages.

7.48.310. Agricultural activities and forest practices; definitions

For the purposes of RCW 7.48.305 only:

(1) "Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of stream banks and watercourses; and conversion from

one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

(2) "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

(3) "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other farm products.

(4) "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries and apiary products, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

(5) "Forest practice" means any activity conducted on or directly pertaining to forest land, as that term is defined in RCW 76.09.020, and relating to growing, harvesting, or processing timber. The term "forest practices" includes, but is not limited to, road and trail construction, final and intermediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of diseases and insects, salvage of trees, brush control, and owning land where trees may passively grow until one of the preceding activities is deemed timely by the owner.

7.48.315. Agricultural activities and forest practices; recovering lawsuit costs; farmers

(a) A farmer who prevails in any action, claim, or counterclaim alleging that agricultural activity on a farm constitutes a nuisance may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(b) A farmer who prevails in any action, claim, or counterclaim (a) based on an allegation that agricultural activity on a farm is in violation of specified laws, rules, or ordinances, (b) where such activity is not found to be in violation of the specified laws, rules, or ordinances, and (c) actual damages are realized by the farm as a result of the action, claim, or counterclaim, may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(c) The costs and expenses that may be recovered according to subsection (a) or (b) of this section include actual damages and reasonable attorneys' fees and costs. For the purposes of this subsection, “actual damages” include lost revenue and the replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the action, claim, or counterclaim.

(d) In addition to any sums recovered according to subsection (a) or (b) of this section, a farmer may recover exemplary damages if a court finds that the action, claim, or counterclaim was initiated maliciously and without probable cause.

(e) A farmer may not recover the costs and expenses authorized in this section from a state or local agency that investigates or pursues an enforcement action pursuant to an allegation as specified in subsection (b) of this section.

7.48.320. Agricultural activities and forest practices; recovering costs to investigate complaints; state and local agencies

A state or local agency required to investigate a complaint alleging agricultural activity on a farm is in violation of specified laws, rules, or ordinances and where such activity is not found to be in violation of such specified laws, rules, or ordinances may recover its full investigative costs and expenses if a court determines that the complaint was initiated maliciously and without probable cause

West Virginia
W. Va. Code, § 19-19-1 to 8

§ 19-19-1. Purpose; public policy

Whereas, agricultural production of food and fiber is a basic necessity to sustain human life, and essential to the general welfare and stability of this State and the citizens thereof, and the continued conduct of the utilization of land in the conduct of agricultural production, including woodland and forestry production, is a necessity to the welfare and common good of all of the citizens of this State; and,

Whereas, the infringement upon agricultural lands and agricultural operations by other uses and occupancies which are either adverse or incompatible with the continued agricultural utilization may be of such nature as to endanger orderly agricultural production, it is hereby declared to be the public policy of this State that agricultural production and the utilization of land in agricultural productive operations be protected and preserved.

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§ 19-19-2. Definitions

For the purposes of this article:

(a) "Agriculture" shall mean the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices.

(b) “Agricultural land” shall mean any amount of land and the improvements thereupon, used or usable in the production of food, fiber or woodland products of an annual value of $1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this section.

(c) “Agricultural operation” shall mean any facility utilized for agriculture.

§ 19-19-3. Temporary change of agricultural operations

The change of agricultural land use to a differing agricultural use, including rotation or lying fallow from time to time, shall not constitute abandonment as agricultural land or limit the change to any other agricultural use.

§ 19-19-4. Agriculture not adverse; limitation of actions

The conduct of agriculture upon agricultural land shall not be deemed adverse to other use or uses of adjoining or neighboring land, whether such other land be used or occupied for residential, commercial, business or for governmental, or any uses other than agricultural. No complaint or right of action shall be maintained in any court of this State against the owner or operator of agricultural lands adverse to the conduct of agriculture upon agricultural lands, unless:

(1) The complainant's use and occupancy of land of the complainant has existed upon his adjoining or neighboring land before the agricultural operation complained of upon the agricultural land; and

(2) The conduct of such agricultural operation complained of has caused or will cause actual physical damage to the person or property of the owner or occupant of such adjoining or neighboring lands.

§ 19-19-5. Duties of owner or operator maintained

Nothing in this article shall be construed to excuse or relieve the owner or operator of any agricultural lands from any other right or duty as to any other person or persons, and shall apply only to the right to conduct the practice of agriculture upon his agricultural lands, and the rights and duties of such owner or operator shall be in all other respects maintained as to any other person or persons or entity.

§ 19-19-6. Liability for damage or destruction of sylvicultural or agricultural field test crop; damages

(a) Any person or legal entity who willfully and knowingly damages or destroys, or allows an instrumentality within his or her control to damage or destroy a sylvicultural or agricultural field test crop that is grown for personal purposes, commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local government agency, shall be liable for twice the market value of the crop damaged or destroyed prior to damage or destruction, as determined by a court of competent jurisdiction, plus interest and reasonable court costs. Where the damaged or destroyed crops are grown for testing or research purposes, damages shall also include

twice the actual damages relating to production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed.

(b) The rights and remedies available under this section are in addition to any other rights or remedies otherwise available in law or statute.

(c) For the purpose of this section, the term "person" means an individual or any nongovernmental group, association, corporation or any other nongovernmental entity.

§ 19-19-7. Additional limitations on nuisance actions

(a) The provisions of this section are in addition to the limitations on actions brought against an agricultural operation in § 19-19-4 of this code, and shall also apply to any nuisance action brought against an agricultural operation in any court of this state.

(b) A person may not file a nuisance action to recover damages in which an agricultural operation is alleged to be a public or private nuisance unless:

(1) He or she is the majority legal land owner;

(2) He or she owns property adversely affected by agricultural operations within one half mile of the agricultural operation; and

(3) The agricultural operation has materially violated a federal, state, or local law applicable to agriculture.

(c) No agricultural operation within this state which has been in operation for a period of more than one year shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where such agricultural operation is located. In any nuisance action, public or private, against an agricultural operation or its principals or employees proof that the agricultural operation has existed for one year or

more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.

(d) No state or local agency may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.

(e) No agricultural operation shall be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.

(f) No agricultural operation shall be considered a nuisance, private or public, if the agricultural operation makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits.

(1) For the purpose of this section, a reasonable expansion includes, but is not limited to:

(A) Transfer of the agricultural operation;

(B) Purchase of additional land for the agricultural operation;

(C) Introducing technology to an existing agricultural operation including, but not limited to, new activities, practices, equipment, and procedures consistent with technological development within the agricultural industry;

(D) Applying a Natural Resources Conservation Service program or other United States Department of Agriculture program to an existing or future agricultural operation; or

(E) Any other change that is related and applied to an existing agricultural operation, so long as the change does not affect the agricultural operation's compliance with applicable state and federal laws, regulations, and permits.

(2) The reasonable expansion exemption provided by this subsection cannot apply to an expansion that:

(A) Creates a substantially adverse effect upon the environment; or

(B) Creates a hazard to public health and safety.

(g) A requirement of a municipality does not apply to an agricultural operation situated outside of the municipality's corporate boundaries on the effective date of this chapter. If an agricultural operation is subsequently annexed or otherwise brought within the corporate boundaries of a municipality, the requirements of the municipality do not apply to the agricultural operation.

(h) An agricultural operation is not, nor shall it become, a private or public nuisance after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting the basis for the nuisance action exist substantially unchanged since the established date of operation. The established date of operation is the date on which an agricultural operation commenced.

(i) The provisions of this section shall not apply in any of the following circumstances:

(1) Whenever a nuisance results from the negligent operation of any such agricultural operation; or

(2) To affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that

is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of agricultural operation.

(j) The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of operations or by diminishing the size of the operation.

§ 19-19-8. Damages

(a) A person who brings a nuisance action for damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of § 19-19-7(h) of this code is liable to the agricultural operation for all costs and expenses incurred in defense of the action, including, but not limited to, attorneys' fees, court costs, travel, and other related incidental expenses incurred in the defense.

(b) In no event shall the total amount of damages in any successful nuisance action exceed the diminished value of the subject property.

(c) The exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation shall be as follows:

(1) If the nuisance is determined to be a permanent nuisance, compensatory damages shall be limited to the reduction in the fair market value of the claimant's property caused by the nuisance, not to exceed the fair market value of the claimant's property; and

(2) If the nuisance is determined to be a temporary nuisance, compensatory damages shall be limited to the diminution of the fair rental value of the claimant's property caused by the nuisance.

(d) If any claimant or claimant's successor in interest brings a subsequent private nuisance action against any agricultural operation, the combined recovery from all such actions shall not exceed the fair market value of his or her property. This limitation applies regardless of whether the subsequent action or actions were brought against a different defendant than the preceding action or actions.

(e) A claimant shall not be awarded punitive damages for nuisance actions originating from an agricultural operation.

Wisconsin
Wis. Stat. § 823.08

Current through 2019 Act 186, published April 18, 2020.

823.08. Actions against agricultural uses

(a) Legislative purpose. The legislature finds that development in rural areas and changes in agricultural technology, practices and scale of operation have increasingly tended to create conflicts between agricultural and other uses of land. The legislature believes that, to the extent possible consistent with good public policy, the law should not hamper agricultural production or the use of modern agricultural technology. The legislature therefore deems it in the best interest of the state to establish limits on the remedies available in those conflicts which reach the judicial system. The legislature further asserts its belief that local units of government, through the exercise of their zoning power, can best prevent such conflicts from arising in the future, and the legislature urges local units of government to use their zoning power accordingly.

(b) Definitions. In this section:

(1) "Agricultural practice" means any activity associated with an agricultural use.

(2) "Agricultural use" has the meaning given in s. 91.01(2).

(c) Nuisance actions.

(1) An agricultural use or an agricultural practice may not be found to be a nuisance if all of the following apply:

(A) The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without substantial interruption before the plaintiff began the use of property that the plaintiff alleges was interfered with by the agricultural use or agricultural practice.

(B) The agricultural use or agricultural practice does not present a substantial threat to public health or safety.

(am) Paragraph (a) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.

(2) In an action in which an agricultural use or an agricultural practice is found to be a nuisance, the following conditions apply:

(A) The relief granted may not substantially restrict or regulate the agricultural use or agricultural practice, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

(B) If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court shall do all of the following:

(i) Request public agencies having expertise in agricultural matters to furnish the court with suggestions for practices suitable to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance.

(ii) Provide the defendant with a reasonable time to take the action directed in the court's order. The time allowed for the defendant to take the action may not be less than one year after the date of the order unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

(C) If the court orders the defendant to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the court may not order the defendant to take any action that substantially and adversely affects the

economic viability of the agricultural use, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

(3)(A) Subject to subd.(B), if a court requests the department of agriculture, trade and consumer protection or the department of natural resources for suggestions under par. (2)(B)(i), the department of agriculture, trade and consumer protection or the department of natural resources shall advise the court concerning the relevant provisions of the performance standards, prohibitions, conservation practices and technical standards under s. 281.16(3).

(B) If the agricultural use or agricultural practice alleged to be a nuisance was begun before October 14, 1997, a department may advise the court under subd. (a). only if the department determines that cost-sharing is available to the defendant under s. 92.14, or 281.65 or from any other source.

(d) Costs.

(1) In this subsection, "litigation expenses" means the sum of the costs, disbursements and expenses, including reasonable attorney, expert witness and engineering fees necessary to prepare for or participate in an action in which an agricultural use or agricultural practice is alleged to be a nuisance.

(2) Notwithstanding s. 814.04(1) and (2), the court shall award litigation expenses to the defendant in any action in which an agricultural use or agricultural practice is alleged to be a nuisance if the agricultural use or agricultural practice is not found to be a nuisance.

Wyoming
W.S.1977 § 11-44-101 to 104

§ 11-44-101. Short title

This chapter is known and may be cited as the “Wyoming Right to Farm and Ranch Act”.

§ 11-44-102. Definitions

(a) As used in this act:

(i) “Farm and ranch” means the land, buildings, livestock and machinery used in the commercial production and sale of farm and ranch products;

(ii) “Farm or ranch operation” means the science and art of production of plants and animals useful to man except those listed under W.S. 23-1-101, including, but not limited to, the preparation of these products for man's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, silviculture, dairy, livestock, poultry, bee and any and all forms of farm and ranch products and farm and ranch production;

(iii) “This act” means W.S. 11-44-101 through 11-44-104.

§ 11-44-103. Farm or ranch operations not considered a nuisance; conditions

(a) Notwithstanding any other provision of law, a farm or ranch operation shall not be found to be a public or private nuisance by reason of that operation if that farm or ranch operation:

(i) Conforms to generally accepted agricultural management practices; and

(ii) Existed before a change in the land use adjacent to the farm or ranch land and the farm or ranch operation would not have been a nuisance before the change in land use or occupancy occurred.

§ 11-44-104. Right to farm

(a) To protect agriculture as a vital part of the economy of Wyoming, the rights of farmers and ranchers to engage in farm or ranch operations shall be forever guaranteed in this state.

(b) Nothing in this section shall be construed to modify any provision of common law or statutes relating to trespass, eminent domain, existing or previously enacted laws or rules or any other property rights.

(c) As used in this section “farm and ranch operations” includes any farm or ranch practice recognized as generally accepted under the provisions of W.S. 11-44-103 and any agricultural or livestock management practice recognized as generally accepted under the provisions of W.S. 11-29-115.