

1 Introduced by Senator Starr

2 Referred to Committee on

3 Date:

4 Subject: Court procedure; agriculture; nuisance suits; agricultural activities;
5 right-to-farm

6 Statement of purpose of bill as introduced: This bill proposes to amend the
7 protection against nuisance suits for agricultural activities under the Vermont
8 right-to-farm law by providing that an agricultural activity shall not be a
9 nuisance or trespass when the activity has been in operation for more than one
10 year and the activity was not a nuisance at the time the activity was initiated, or
11 the activity complies with **generally accepted agricultural practices**. The
12 nuisance and trespass protection for an agricultural activity would not apply
13 whenever a nuisance or trespass violation results from the negligent operation
14 of an agricultural activity or from a violation of the State agricultural water
15 quality requirements. The bill would also provide that an agricultural activity
16 shall not lose nuisance or trespass protection due to a change of ownership or a
17 cessation of operation of not more than five years; a change of crops produced;
18 or a change of a farming method or conversion of a farming practice or
19 agricultural activity to another farming method, practice, or agricultural
20 activity on a farm. **The act would also provide that a person shall not bring a**
21 **court action based on a claim of nuisance or trespass arising from an**

1 agricultural activity unless the person and the operator of the agricultural
2 activity, at least once, attempt to resolve through mediation the issue or dispute
3 that the person has concerning operation of the agricultural activity.

4 An act relating to protection from nuisance suits for agricultural activities

5 It is hereby enacted by the General Assembly of the State of Vermont:

6 Sec. 1. 12 V.S.A. chapter 195 is amended to read:

7 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
8 ACTIVITIES

9 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

10 The General Assembly finds that agricultural production is a major
11 contributor to the State's economy; that agricultural lands constitute unique
12 and irreplaceable resources of statewide importance; that the continuation of
13 existing and the initiation of new agricultural activities preserve the landscape
14 and environmental resources of the State, contribute to the increase of tourism,
15 and further the economic welfare and self-sufficiency of the people of the
16 State; and that the encouragement, development, improvement, and
17 preservation of agriculture will result in a general benefit to the health and
18 welfare of the people of the State. In order for the agricultural industry to
19 survive in this State, farms will likely change, adopt new technologies, and
20 diversify into new products, which for some farms will mean increasing in

1 size. The General Assembly finds that agricultural activities are potentially
2 subject to lawsuits based on the theory of nuisance, and that these suits
3 encourage and could force the premature removal of the farmlands and other
4 farm resources from agricultural use. It is the purpose of this chapter to protect
5 reasonable agricultural activities conducted on the farm from nuisance
6 lawsuits.

7 § 5752. DEFINITIONS

8 ~~For the purpose of~~ As used in this chapter,:

9 (1) “agricultural activity” means, but is not limited to:

10 (1) ~~(A)~~ the cultivation or other use of land for producing food, fiber,
11 Christmas trees, maple sap, or horticultural and orchard crops; the raising,
12 feeding, or management of domestic animals as defined in 6 V.S.A. § 1151 or
13 bees; the operation of greenhouses; the production of maple syrup; the on-site
14 storage, preparation, and sale of agricultural products principally produced on
15 the farm; and the on-site production of fuel or power from agricultural
16 products or wastes principally produced on the farm;

17 ~~(2)(B)~~ the preparation, tilling, fertilization, planting, protection,
18 irrigation, and harvesting of crops; the composting of material principally
19 produced by the farm or to be used at least in part on the farm; the ditching and
20 subsurface drainage of farm fields and the construction of farm ponds; the

1 handling of livestock wastes and by-products; and the on-site storage and
2 application of agricultural inputs, including lime, fertilizer, and pesticides;

3 ~~(3)(C)~~ “farming” as defined in 10 V.S.A. § 6001; and

4 ~~(4)(D)~~ “agricultural activities” as defined in 6 V.S.A. § 4802.

5 (2) “Generally accepted agricultural practices” mean:

6 (A) the requirements of 6 V.S.A. chapter 215, including permit
7 requirements or requirements of the Required Agricultural Practices;

8 (B) the requirements of the Agency of Agriculture, Food and
9 Markets’ Vermont Rule for Control of Pesticides; and

10 (C) practices conducted in a manner consistent with proper and
11 accepted customs and standards as established and followed by similar
12 operators of agricultural activities in a similar municipality or region of the
13 State and under similar circumstances.

14 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
15 NUISANCE LAWSUITS

16 ~~(a)(1) Agricultural activities shall be entitled to a rebuttable presumption~~
17 ~~that the activity does not constitute a nuisance if the agricultural activity meets~~
18 ~~all of the following conditions:~~

19 ~~(A) it is conducted in conformity with federal, State, and local laws~~
20 ~~and regulations (including required agricultural practices);~~

21 ~~(B) it is consistent with good agricultural practices;~~

1 ~~(C) it is established prior to surrounding nonagricultural activities;~~

2 and

3 ~~(D) it has not significantly changed since the commencement of the~~
4 ~~prior surrounding nonagricultural activity.~~

5 ~~(2) The presumption that the agricultural activity does not constitute a~~
6 ~~nuisance may be rebutted by a showing that the activity has a substantial~~
7 ~~adverse effect on health, safety, or welfare, or has a noxious and significant~~
8 ~~interference with the use and enjoyment of the neighboring property.~~

9 ~~(b) Nothing in this section shall be construed to limit the authority of State~~
10 ~~or local boards of health to abate nuisances affecting the public health No~~
11 ~~agricultural activity shall be or become a nuisance or trespass when the~~
12 ~~activity:~~

13 ~~(A) has been in operation for more than one year and the activity was~~
14 ~~not a nuisance or trespass at the time the activity was initiated; or~~

15 ~~(B) the activity is conducted in accordance with generally accepted~~
16 ~~agricultural practices.~~

17 ~~(2) The nuisance and trespass protection for an agricultural activity~~
18 ~~provided for under subdivision (1) of this subsection shall not apply whenever~~
19 ~~a nuisance or trespass violation results from the negligent operation of an~~
20 ~~agricultural activity.~~

21 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

1 (a) This chapter is remedial in nature and shall be liberally construed to
2 effectuate its purposes.

3 (b) An agricultural activity shall not lose the nuisance or trespass protection
4 under section 5753 of this title due to:

5 (1) a change of ownership or a cessation of operation, in whole or in
6 part, of not more than five years;

7 (2) a change of crops produced; or

8 (3) a change of a farming method or conversion of farming practices or
9 agricultural activities to other farming methods, practices, or agricultural
10 activities on a farm.

11 (c) If any provision of this chapter is held invalid, the invalidity does not
12 affect other provisions of this chapter that can be given effect without the
13 invalid provision, and for this purpose, the provisions of this chapter are
14 severable.

15 **§ 5755. REQUIRED MEDIATION PRIOR TO SUIT**

16 **(a) A person shall not bring a court action based on a claim of nuisance or**
17 **trespass arising from an agricultural activity unless the person and the operator**
18 **of the agricultural activity, at least once, attempt to resolve through mediation**
19 **the issue or dispute that the person has concerning operation of the agricultural**
20 **activity.**

1 (b) The parties to the mediation may agree upon the use of a mediator to
2 assist in the resolution of the agreed upon issue or dispute, and the parties shall
3 share the cost of the mediator. If the parties to the mediation are unable to
4 resolve the relevant issue or dispute through mediation, the parties may agree
5 to submit the issue or dispute to binding arbitration pursuant to 12 V.S.A.
6 chapter 192 and shall share the cost of the arbitration.

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on July 1, 2023.