

1 Introduced by **Committee on Agriculture**

2 Date:

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

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

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

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

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

4 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
5 ACTIVITIES

6 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

7 The General Assembly finds that agricultural production is a major
8 contributor to the State’s economy; that agricultural lands constitute unique
9 and irreplaceable resources of statewide importance; that the continuation of
10 existing and the initiation of new agricultural activities preserve the landscape
11 and environmental resources of the State, contribute to the increase of tourism,
12 and further the economic welfare and self-sufficiency of the people of the
13 State; and that the encouragement, development, improvement, and
14 preservation of agriculture will result in a general benefit to the health and
15 welfare of the people of the State. In order for the agricultural industry to
16 survive in this State, farms will likely change, adopt new technologies, and
17 diversify into new products, which for some farms will mean increasing in
18 size. The General Assembly finds that agricultural activities are potentially
19 subject to lawsuits based on the theory of nuisance, and that these suits
20 encourage and could force the premature removal of the farmlands and other
21 farm resources from agricultural use. It is the purpose of this chapter to protect

1 reasonable agricultural activities conducted on the farm from nuisance
2 lawsuits.

3 § 5752. DEFINITIONS

4 ~~For the purpose of~~ As used in this chapter:

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

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

13 ~~(2)(B)~~ (B) the preparation, tilling, fertilization, planting, protection,
14 irrigation, and harvesting of crops; the composting of material principally
15 produced by the farm or to be used at least in part on the farm; the ditching and
16 subsurface drainage of farm fields and the construction of farm ponds; the
17 handling of livestock wastes and by-products; and the on-site storage and
18 application of agricultural inputs, including lime, fertilizer, and pesticides;

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

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

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

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

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

5 (C) practices conducted in a manner consistent with proper and
6 accepted customs and standards followed by similar operators of agricultural
7 activities in the State.

8 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
9 NUISANCE LAWSUITS

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

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

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

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

17 ~~and~~

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

20 ~~(2) The presumption that the agricultural activity does not constitute a~~
21 ~~nuisance may be rebutted by a showing that the activity has a substantial~~

1 ~~adverse effect on health, safety, or welfare, or has a noxious and significant~~
2 ~~interference with the use and enjoyment of the neighboring property.~~

3 ~~(b) Nothing in this section shall be construed to limit the authority of State~~
4 ~~or local boards of health to abate nuisances affecting the public health~~ **No**
5 **agricultural activity shall be or become a nuisance or trespass when the activity**
6 **is conducted in accordance with generally accepted agricultural practices.**

7 **(2) A plaintiff alleging that an agricultural activity is a nuisance or**
8 **trespass shall have the burden of proving by a preponderance of the evidence**
9 **that the agricultural activity is not conducted in accordance with generally**
10 **accepted agricultural practice.**

11 **(3) The nuisance and trespass protection for an agricultural activity**
12 **provided for under subdivision (1) of this subsection shall not apply whenever**
13 **a nuisance or trespass violation results from the negligent operation of an**
14 **agricultural activity.**

15 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

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

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

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

1 (2) a change of crops produced; or

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

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

9 § 5755. REQUIRED MEDIATION PRIOR TO SUIT

10 (a) A person shall not bring a court action based on a claim of nuisance or
11 trespass arising from an agricultural activity unless the person and the operator
12 of the agricultural activity, at least once, attempt to resolve through mediation
13 the issue or dispute that the person has concerning operation of the agricultural
14 activity. The mediation shall be conducted according to the provisions of the
15 Uniform Mediation Act set forth in 12 V.S.A. chapter 194.

16 (b) The parties to the mediation may agree upon the use of a mediator to
17 assist in the resolution of the agreed upon issue or dispute, and the parties shall
18 share the cost of the mediator. If the parties to the mediation are unable to
19 resolve the relevant issue or dispute through mediation, the parties may agree
20 to submit the issue or dispute to binding arbitration pursuant to 12 V.S.A.
21 chapter 192 and shall share the cost of the arbitration.

1 (c) A person bringing a court action based on a claim of nuisance or
2 trespass arising from an agricultural activity shall provide the court with a
3 sworn statement of an attempt to resolve the issue or dispute through
4 mediation.

5 Sec. 2. EFFECTIVE DATE

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