

1 H.411

2 Introduced by Representative Adams of Hartland

3 Referred to Committee on

4 Date:

5 Subject: Municipal government; sport shooting ranges

6 Statement of purpose: This bill proposes to provide a rebuttable presumption  
7 that a nuisance does not exist at an existing sport shooting range based on the  
8 hours of operation and number of firing positions, provided that such activity  
9 has not significantly increased since acquisition of the property by the person  
10 bringing a nuisance claim. The bill would exempt from Act 250 the  
11 construction of improvements at an existing sport shooting range that are  
12 intended to improve the safety of firing positions, buildings, or other facilities  
13 at the sport shooting range.

14 An act relating to sport shooting ranges

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

16 Sec. 1. 10 V.S.A. § 5227 is amended to read:

17 § 5227. SPORT SHOOTING RANGES; MUNICIPAL AND

18 STATE AUTHORITY

1           (a) “Sport shooting range” or “range” means an area designed and operated  
2 for the use of archery, rifles, shotguns, pistols, skeet, trap, black powder, or  
3 any other similar sport shooting.

4           (b) The owner or operator of a sport shooting range, and a person lawfully  
5 using the range, who is in substantial compliance with any noise use condition  
6 of any issued municipal or state land use permit otherwise required by law  
7 shall not be subject to any civil liability for damages or any injunctive relief  
8 resulting from noise or noise pollution, notwithstanding any provision of law  
9 to the contrary.

10          (c) If no municipal or state land use permit is otherwise required by law,  
11 then the owner or operator of the range and any person lawfully using the  
12 range shall not be subject to any civil liability for damages or any injunctive  
13 relief relating to noise or noise pollution.

14          (d) Nothing in this section shall prohibit or limit the authority of a  
15 municipality or the state to enforce any condition of a lawfully issued and  
16 otherwise required permit.

17          (e)(1) In the event that the owner, operator, or user of a range is not  
18 afforded the protection set forth in subsection (b) or (c) of this section, this  
19 subsection shall apply. A nuisance claim against a range may only be brought  
20 by an owner of property abutting the range. The range shall have a rebuttable

1 presumption that the range does not constitute any form of nuisance if the  
2 range meets the following conditions:

3 (A) the range was established prior to the acquisition of the property  
4 owned by the person bringing the nuisance claim; and

5 (B) the frequency of the shooting, hours of operation, number of  
6 firing positions, or other alleged nuisance activity at the range has not  
7 significantly increased since acquisition of the property owned by the person  
8 bringing the nuisance claim. Changes in the use of a range shall not be  
9 included in the calculation of an increase in frequency or other alleged  
10 nuisance activity.

11 (2) The presumption that the range does not constitute a nuisance may  
12 be rebutted only by an abutting property owner showing that the activity has a  
13 noxious and significant interference with the use and enjoyment of the abutting  
14 property.

15 (f) Prior to use of a sport shooting range after dark for purposes of training  
16 conducted by a federal, state, county, or municipal law enforcement agency,  
17 the sport shooting range shall notify those homeowners and businesses with  
18 property abutting the range that have requested such notice from the range.

19 (g) If any subsection of this section is held invalid, the invalidity does not  
20 affect the other subsections of this section that can be given effect without the

1       invalid subsection, and for this purpose, the subsections of this section are  
2       severable.

3       Sec. 2. 10 V.S.A. § 6001(3)(D) is amended to read:

4               (D) The word “development” does not include:

5                       (i) The construction of improvements for farming, logging, or  
6       forestry purposes below the elevation of 2,500 feet.

7                       (ii) The construction of improvements for an electric generation or  
8       transmission facility that requires a certificate of public good under section  
9       30 V.S.A. § 248 or a natural gas facility as defined in subdivision 30 V.S.A.  
10      § 248(a)(3).

11                      (iii) [Repealed.]

12                      (iv) The construction of improvements for agricultural fairs that  
13      are open to the public for 60 days per year, or fewer, provided that any  
14      improvements constructed do not include one or more buildings.

15                      (v) The construction of improvements for the exhibition or  
16      showing of equines at events that are open to the public for 60 days per year, or  
17      fewer, provided that any improvements constructed do not include one or more  
18      buildings.

19                      (vi) The construction of improvements at an existing sport  
20      shooting range, as defined in section 5227 of this title, provided that any

1 improvements constructed are intended to improve the safety of firing  
2 positions, buildings, or other facilities at the sport shooting range.

3 (vii) The construction of improvements at an existing sport  
4 shooting range, as defined in section 5227 of this title, provided that the  
5 department of fish and wildlife has approved the design of the range.

6 Sec. 3. 24 V.S.A. § 2291 is amended to read:

7 § 2291. ENUMERATION OF POWERS

8 For the purpose of promoting the public health, safety, welfare, and  
9 convenience, a town, city, or incorporated village shall have the following  
10 powers:

11 \* \* \*

12 (8) To regulate or prohibit the use or discharge, but not possession of,  
13 firearms within the municipality or specified portions thereof, provided that an  
14 ordinance adopted under this subdivision shall be consistent with section 2295  
15 of this title and shall not prohibit, reduce, or limit discharge at any existing  
16 sport shooting range, as that term is defined in section 5227 of Title 10. A  
17 municipal ordinance or bylaw adopted under this subdivision shall not limit  
18 activity on a parcel or portion of the municipality in excess of 10 acres. A  
19 municipal ordinance or bylaw that conflicts with this subdivision shall be void  
20 and unenforceable.

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Sec. 4. 24 V.S.A. § 2295 is amended to read:

§ 2295. AUTHORITY OF MUNICIPAL AND COUNTY GOVERNMENTS  
TO REGULATE FIREARMS, AMMUNITION, HUNTING,  
FISHING, AND TRAPPING

Except as otherwise provided by law, no town, city, or incorporated village, by ordinance, resolution or other enactment, shall directly regulate hunting, fishing and trapping or the possession, ownership, transportation, transfer, sale, purchase, carrying, licensing or registration of traps, firearms, ammunition, or components of firearms or ammunition. An ordinance or bylaw that conflicts with or is inconsistent with this section shall be void and unenforceable. This section shall not limit the powers conferred upon a town, city or incorporated village under ~~section~~ subdivision 2291(8) of this title. The provisions of this section shall supersede any inconsistent provisions of a municipal charter.

Sec. 5. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

(a) The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- 1           (1) State- or community-owned and operated institutions and facilities.
- 2           (2) Public and private schools and other educational institutions certified  
3 by the state department of education.
- 4           (3) Churches and other places of worship, convents, and parish houses.
- 5           (4) Public and private hospitals.
- 6           (5) Regional solid waste management facilities certified under  
7 10 V.S.A. chapter 159.
- 8           (6) Hazardous waste management facilities for which a notice of intent  
9 to construct has been received under 10 V.S.A. § 6606a.
- 10          (b) A bylaw under this chapter shall not regulate public utility power  
11 generating plants and transmission facilities regulated under 30 V.S.A. § 248.
- 12          (c) Except as otherwise provided by this section and by 10 V.S.A. § 1976,  
13 if any bylaw is enacted with respect to any land development that is subject to  
14 regulation under state statutes, the more stringent or restrictive regulation  
15 applicable shall apply.
- 16          (d) A bylaw under this chapter shall not regulate accepted agricultural and  
17 silvicultural practices, including the construction of farm structures, as those  
18 practices are defined by the secretary of agriculture, food and markets or the  
19 commissioner of forests, parks and recreation, respectively, under subsections  
20 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

1           (1) For purposes of this section, “farm structure” means a building,  
2 enclosure, or fence for housing livestock, raising horticultural or agronomic  
3 plants, or carrying out other practices associated with accepted agricultural or  
4 farming practices, including a silo, as “farming” is defined in subdivision  
5 6001(22) of Title 10, but excludes a dwelling for human habitation.

6           (2) A person shall notify a municipality of the intent to build a farm  
7 structure and shall abide by setbacks approved by the secretary of agriculture,  
8 food and markets. No municipal permit for a farm structure shall be required.

9           (3) A municipality may enact a bylaw that imposes forest management  
10 practices resulting in a change in a forest management plan for land enrolled in  
11 the use value appraisal program pursuant to 32 V.S.A. chapter 124 only to the  
12 extent that those changes are silviculturally sound, as determined by the  
13 commissioner of forests, parks and recreation, and protect specific natural,  
14 conservation, aesthetic, or wildlife features in properly designated zoning  
15 districts. These changes also must be compatible with 32 V.S.A. § 3755.

16           (e) A bylaw enacted under this chapter shall be subject to the restrictions  
17 created under section 2295 of this title, with respect to the limits on municipal  
18 power to regulate hunting, fishing, trapping, and other activities specified  
19 under that section.

20           (f) This section shall apply in every municipality, notwithstanding any  
21 existing bylaw to the contrary.

1        (g) A bylaw enacted under this chapter shall not regulate the construction  
2        or renovation of an existing sport shooting range, as defined in section 5227 of  
3        this title, provided that the department of fish and wildlife has approved the  
4        design for the construction or renovation of the range.