

Comparison of Vermont Right to Farm Law to Other States

A. Vermont Right to Farm Law

Title 12: Court Procedure: Chapter 195: Nuisance Suits Against Agricultural Activities

§ 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 farmlands 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 by-products; and the on-site storage and application of agricultural inputs, including lime, fertilizer, and pesticides;
- (3) "farming" as defined in 10 V.S.A. § 6001; and
- (4) "agricultural activities" as defined in 6 V.S.A. § 4802.

§ 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. Other States

1. Kentucky

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. KRS § 413.072(2)

2. Louisiana

La. Rev. Stat. Ann. §3:3603(b). Right to Farm

(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.

La. Rev. Stat. Ann. §3:3604. Presumption

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

3. Pennsylvania

3 Pa. Cons. Stat. § 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.

4. Oregon

Oregon Revised Statutes § 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.

Oregon Revised Statutes § 30.937. Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use; exceptions (Land within urban boundary)

(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.