

1 H.644

2 Introduced by Representatives Mrowicki of Putney and Deen of Westminster

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; nuisance; suits against forestry practices

6 Statement of purpose of bill as introduced: This bill proposes to provide that a
7 forestry operation is entitled to a rebuttable presumption that the operation
8 does not constitute a public or private nuisance if the forestry operation is
9 conducted in conformity with federal, State, and local laws and regulations and
10 any silvicultural practices adopted by the Commissioner of Forests, Parks and
11 Recreation.

12 An act relating to nuisance suits against forestry operations

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

14 Sec. 1. 12 V.S.A. chapter 196 is added to read:

15 CHAPTER 196. NUISANCE SUITS AGAINST FORESTRY

16 OPERATIONS

17 § 5756. DEFINITIONS

18 As used in this chapter:

19 (1) "Commissioner" means the Commissioner of Forests, Parks and
20 Recreation.

1 (2)(A) “Forestland” means a tract of land that:

2 (i) is at least ten percent stocked by trees of any size, whether of
3 commercial or noncommercial species; or

4 (ii) formerly maintained tree cover and is not currently developed
5 for nonforest use.

6 (B) Land enrolled in the use value appraisal program under 32 V.S.A.
7 chapter 124 as managed forestland shall be presumed to be forestland for the
8 purposes of this chapter.

9 (3) “Forestry operation” means an activity related to the harvesting,
10 reforestation, and other management activities on forestland that are consistent
11 with principles of sustainable forestry, including thinning, pest control,
12 fertilization, and wildlife management.

13 (4) “Public or private nuisance” means allegations of nuisance based on
14 any of the following:

15 (A) visual changes due to the removal of vegetation or timber;

16 (B) noise from forestry equipment used in normal, generally accepted
17 forestry management practices;

18 (C) removal of vegetation or timber on a forest adjoining the property
19 of another landowner; or

20 (D) the use of chemicals normally used in forestry operations, and
21 applied under generally accepted forestry management practices.

1 § 5757. FORESTRY OPERATIONS; PROTECTION FROM NUISANCE

2 (a)(1) A forestry operation shall be entitled to a rebuttable presumption that
3 the operation does not constitute a public or private nuisance if the forestry
4 operation meets all of the following conditions:

5 (A) the forestry operation is conducted in conformity with federal,
6 State, and local laws and regulations; and

7 (B) the forestry operation is conducted in conformity with any
8 silvicultural practices adopted by the Commissioner under 10 V.S.A. § 2622.

9 (2) The presumption that the forestry operation does not constitute a
10 public or private nuisance shall apply when the person engaged in the forestry
11 operation owns or leases the land where the forestry operation occurs or is
12 contracted or authorized by the landowner or lessee to conduct the operation.

13 (3) The presumption that the forestry operation does not constitute a
14 public or private nuisance may be rebutted by a showing that the activity has a
15 substantial adverse effect on health, safety, or welfare, or has a noxious and
16 significant interference with the use and enjoyment of the neighboring
17 property.

18 (b) Nothing in this section shall be construed to limit the authority of State
19 or local boards of health to abate nuisances affecting the public health.

20 Sec. 2. EFFECTIVE DATE

21 This act shall take effect on July 1, 2016.