

1 S.115

2 Introduced by Senator Parent

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; agriculture; right to farm; nuisance

6 Statement of purpose of bill as introduced: This bill proposes to amend the
7 right-to-farm law in Vermont to provide that no action for nuisance shall be
8 brought against the owner or operator of a farm that has lawfully been
9 conducting agricultural activities for two or more years prior to the date the
10 nuisance action is commenced.

11 An act relating to the right to farm in Vermont

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

13 Sec. 1. 12 V.S.A. § 5752 is amended to read:

14 § 5752. DEFINITIONS

15 ~~For the purpose of this chapter, “agricultural~~ As used in this chapter:

16 (1) “Agricultural activity” means, but is not limited to:

17 (1)(A) the cultivation or other use of land for producing food, fiber,
18 Christmas trees, maple sap, or horticultural and orchard crops; the raising,
19 feeding, or management of domestic animals ~~as defined in 6 V.S.A. § 1151~~ or
20 bees; the operation of greenhouses; the production of maple syrup; the on-site

1 storage, preparation, and sale of agricultural products principally produced on
2 the farm; and the on-site production of fuel or power from agricultural
3 products or wastes principally produced on the farm;

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

10 (2) "Domestic animal" has the same meaning as in 6 V.S.A. § 1151.

11 (3) "Farm" means land that is owned or leased by a person engaged in
12 agricultural activities.

13 Sec. 2. 12 V.S.A. § 5753 is amended to read:

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 No action for nuisance shall be brought against the owner or operator of a
10 farm that has lawfully been conducting agricultural activities for two or more
11 years prior to the date the nuisance action is commenced. The established date
12 of operation is the date on which an agricultural activity on a farm
13 commenced.

14 (b) An owner or operator of a farm who conducts an agricultural activity
15 protected under this section may expand the scope of the agricultural activity,
16 including increasing the acreage of the farm, increasing the number of
17 domestic animals on the farm, or changing agricultural activities, without
18 losing the protection from nuisance suit under subsection (a) provided that the
19 expanded agricultural activity complies with all applicable State and federal
20 law.

1 (c) An owner or operator of a farm who conducts an agricultural activity
2 protected under this section may assign or transfer the protection under
3 subsection (a) of this section to any successor in interest.

4 (d) An owner or operator of a farm who conducts an agricultural activity
5 protected under this section shall not waive protection by temporarily ceasing
6 or decreasing the scope of the protected agricultural activity.

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

9 Sec. 3. EFFECTIVE DATE

10 This act shall take effect on passage.