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H.732

Introduced by Representatives Smith of New Haven and Higley of Lowell

Referred to Committee on

Date:

Subject: Agriculture; court procedure; right to farm; nuisance

Statement of purpose of bill as introduced: This bill proposes to amend the right-to-farm law to provide that a farm or farm operation shall not be found to be a public or private nuisance under one or both of the following: the farm or farm operation existed before a change in the land use or occupancy in proximity to the farm, and if before that change in land use or occupancy of the farm, the farm or farm operation would not have been a nuisance; or the farm or farm operation alleged to be a nuisance conforms to State and federal law. The bill also would provide that if a farm or farm operation prevails in a nuisance suit brought against it, the court shall require the plaintiff to pay the actual amount of costs and expenses incurred by the farm or farm operation in defense, including attorney's fees.

An act relating to the right to farm

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

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

3 CHAPTER 195. NUISANCE SUITS AGAINST ~~AGRICULTURAL~~
4 ~~ACTIVITIES~~ FARM OPERATIONS

5 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

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

1 purpose of this chapter to protect reasonable agricultural activities conducted
2 ~~on the farm~~ farm operations from nuisance lawsuits.

3 § 5752. DEFINITIONS

4 For the purpose of As used in this chapter, “agricultural activity” means, but
5 is not limited to:

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

19 (1) “Farm” means the land, plants, animals, buildings, or structures on a
20 parcel of land used for farming.

21 (2) “Farming” has the same meaning as in 10 V.S.A. § 6001(22).

1 (3) “Farm operation” means the operation and management of a farm or
2 a condition or activity that occurs at any time as necessary on a farm, including
3 all those activities defined as farming and all of the following:

4 (A) marketing produce at roadside stands or farm markets;

5 (B) the generation of noise, odors, dust, fumes, and other associated
6 conditions;

7 (C) the composting of material principally produced by the farm or to
8 be used at least in part on the farm;

9 (D) the ditching and subsurface drainage of farm fields and the
10 construction of farm ponds;

11 (E) the handling of livestock wastes and by-products;

12 (F) the operation of machinery and equipment necessary for a farm,
13 including irrigation and drainage systems, pumps, and on-farm grain dryers;

14 (G) the movement of vehicles, machinery, equipment, and farm
15 products and associated inputs necessary for farm operations on the roadway;

16 (H) field preparation and ground and aerial seeding and spraying;

17 (I) the on-site storage and application of agricultural inputs, including
18 lime, fertilizer, organic materials, conditioners, and pesticides;

19 (J) the use of alternative pest management techniques;

20 (K) the management, storage, transport, utilization, and application of
21 farm by-products, including manure or agricultural wastes;

1 (L) the conversion from one farm operation to another farm
2 operation; and

3 (M) the employment and use of labor.

4 (4) “Farm product” means those products produced by farming that are
5 sold in commerce or otherwise used by humans, including forages and sod
6 crops, grains and feed crops, field crops, dairy and dairy products, poultry and
7 poultry products, livestock and livestock products, bees and bee products,
8 berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees
9 and tree products, or any other product produced from farming.

10 (5) “Livestock” means cattle, cow or calf pairs, youngstock, heifers,
11 bulls, American bison, swine, sheep, goats, horses, cervids, camelids, ratites,
12 rabbits, pheasants, chukar partridge, coturnix quail, laying hens, broiler
13 chickens, ducks, turkeys, or any other type of animal or fowl designated as
14 livestock by the Secretary of Agriculture, Food and Markets under the
15 Required Agricultural Practices.

16 § 5753. ~~AGRICULTURAL ACTIVITIES~~ FARM OPERATIONS;

17 PROTECTION FROM NUISANCE LAWSUITS

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

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

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

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

5 and

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

8 ~~(2) The presumption that the agricultural activity does not constitute a~~
9 ~~nuisance may be rebutted by a showing that the activity has a substantial~~
10 ~~adverse effect on health, safety, or welfare, or has a noxious and significant~~
11 ~~interference with the use and enjoyment of the neighboring property.~~

12 (a) A farm or farm operation shall not be found to be a public or private
13 nuisance under one or both of the following:

14 (1) the farm or farm operation existed before a change in the land use or
15 occupancy of land in proximity to the farm, and if before that change in land
16 use or occupancy of the farm, the farm or farm operation would not have been
17 a nuisance.

18 (2) the farm or farm operation alleged to be a nuisance is in good
19 standing with the Secretary of Agriculture, Food and Markets under 6 V.S.A.
20 chapter 215.

1 (b) A farm or farm operation that is conforming with State and federal law
2 shall not be found to be a public or private nuisance as a result of any of the
3 following:

4 (1) a change in ownership or size;

5 (2) temporary cessation or interruption of farming;

6 (3) enrollment in governmental programs;

7 (4) adoption of new technology; or

8 (5) a change in type of farm product being produced.

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

11 * * *

12 § 5754a. AWARD OF COSTS AND EXPENSES

13 In any nuisance action brought in which a farm or farm operation is alleged
14 to be a nuisance, if the defendant farm or farm operation prevails, the court
15 shall require the plaintiff to pay the actual amount of costs and expenses
16 determined by the court to have been reasonably incurred by the farm or farm
17 operation in connection with the defense of the action, including attorney's
18 fees.

19 Sec. 2. EFFECTIVE DATE

20 This act shall take effect on passage.