

Side by Side of Right to Farm under existing 12 V.S.A. chapter 195 and S.268 as Introduced

Key Sections	12 V.S.A. ch.195	S.268 As Introduced
<p>Purpose</p>	<p>§ 5751. LEGISLATIVE FINDINGS AND PURPOSE</p> <p>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.</p>	<p>§ 5751. LEGISLATIVE FINDINGS AND PURPOSE</p> <p>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 farm operations 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 farm operations 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 farmland from agricultural use. It is the purpose of this chapter to protect reasonable agricultural activities conducted on the farm farm operations from nuisance lawsuits.</p>

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<p>Definitions</p>	<p>§ 5752. DEFINITIONS</p> <p>For the purpose of this chapter, “agricultural activity” means, but is not limited to:</p> <p>(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;</p> <p>(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.</p>	<p>§ 5752. DEFINITIONS</p> <p>For the purpose of this chapter, “agricultural <u>As used in this chapter:</u></p> <p>(1) “<u>Agricultural</u> activity” means, but is not limited to:</p> <p>(A) 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 <u>as defined in 6 V.S.A. § 1151</u> 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;</p> <p>(B) 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; <u>or</u></p> <p>(C) <u>farming as defined under 10 V.S.A. § 6001(22).</u></p> <p>(2) “<u>Farm</u>” means the land, plants, animals, buildings, or structures on a <u>parcel of land used for farming.</u></p>

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		<p><u>(3) “Farm operation” means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm, including all those activities defined as “agricultural activity” and all of the following:</u></p> <ul style="list-style-type: none"> <u>(A) marketing produce at roadside stands or farm markets;</u> <u>(B) the generation of noise, odors, dust, fumes, and other associated conditions;</u> <u>(C) the composting of material principally produced by the farm or to be used at least in part on the farm;</u> <u>(D) the ditching and subsurface drainage of farm fields and the construction of farm ponds;</u> <u>(E) the handling of livestock wastes and by-products;</u> <u>(F) the operation of machinery and equipment necessary for a farm, including irrigation and drainage systems, pumps, and on-farm grain dryers;</u> <u>(G) the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway;</u> <u>(H) field preparation and ground and aerial seeding and spraying;</u> <u>(I) the on-site storage and application of agricultural inputs, including lime, fertilizer, organic materials, conditioners, and pesticides;</u>

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		<p><u>(J) the use of alternative pest management techniques;</u></p> <p><u>(K) the management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes;</u></p> <p><u>(L) the conversion from one farm operation to another farm operation;</u></p> <p><u>and</u></p> <p><u>(M) the employment and use of labor.</u></p> <p><u>(4) “Farm product” means those products produced by an agricultural activity that are sold in commerce or otherwise used by humans, including forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, livestock and livestock products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, or any other product produced from farming.</u></p> <p><u>(5) “Livestock” means cattle, cow or calf pairs, youngstock, heifers, bulls, American bison, swine, sheep, goats, horses, cervids, camelids, ratites, rabbits, pheasants, chukar partridge, coturnix quail, laying hens, broiler chickens, ducks, turkeys, or any other type of animal or fowl designated as livestock by the Secretary of Agriculture, Food and Markets under the Required Agricultural Practices.</u></p>

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<p>Nuisance Protection</p>	<p>§ 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM NUISANCE LAWSUITS</p> <p>(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:</p> <p>(A) it is conducted in conformity with federal, State, and local laws and regulations (including required agricultural practices);</p> <p>(B) it is consistent with good agricultural practices;</p> <p>(C) it is established prior to surrounding nonagricultural activities; and</p> <p>(D) it has not significantly changed since the commencement of the prior surrounding nonagricultural activity.</p> <p>(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.</p>	<p>§ 5753. AGRICULTURAL ACTIVITIES; FARM OPERATIONS; PROTECTION FROM NUISANCE LAWSUITS</p> <p>(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:</p> <p>(A) it is conducted in conformity with federal, State, and local laws and regulations (including required agricultural practices);</p> <p>(B) it is consistent with good agricultural practices;</p> <p>(C) it is established prior to surrounding nonagricultural activities; and</p> <p>(D) it has not significantly changed since the commencement of the prior surrounding nonagricultural activity.</p> <p>(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.</p> <p>(a) A farm or farm operation shall not be found to be a public or private nuisance under one or more of the following:</p>

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		<p><u>(1) The farm or farm operation existed before a change in the land use or occupancy of land 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.</u></p> <p><u>(2) The farm or farm operation alleged to be a nuisance is in good standing with the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215.</u></p> <p><u>(3) The farm or farm operation has been conducting the agricultural activity at issue for two or more years prior to the date a nuisance action is commenced. In determining the duration of an agricultural activity on a farm or farm operation, the initial date of operation shall be when the agricultural activity commenced on the farm or farm operation.</u></p> <p><u>(b) A farm or farm operation that is conforming with State and federal law shall not be found to be a public or private nuisance as a result of any of the following:</u></p> <ul style="list-style-type: none"><u>(1) a change in ownership or size;</u><u>(2) temporary cessation or interruption of farming;</u><u>(3) enrollment in governmental programs;</u><u>(4) adoption of new technology; or</u>

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	<p>(b) Nothing in this section shall be construed to limit the authority of State or local boards of health to abate nuisances affecting the public health.</p> <p style="text-align: center;">* * *</p>	<p><u>(5) a change in the type of farm product being produced.</u></p> <p>(b)(c) Nothing in this section shall be construed to limit the authority of State or local boards of health to abate nuisances affecting the public health.</p> <p style="text-align: center;">* * *</p>
<p>Attorney’s Fees/Costs</p>	<p>[No comparable provision in current law]</p>	<p><u>§ 5754a. AWARD OF COSTS AND EXPENSES</u></p> <p><u>In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the court shall require the plaintiff to pay the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, including attorney’s fees.</u></p>