

Bill:

As I have said previously, if this bill were to pass as is, it would certainly be better for farmers than current Vermont Law. I have provided some notes below.

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- It only refers to providing protection from nuisance suits, but the text of the bill also provides protections from “trespass” throughout. I use parenthesis here because the term trespass is really a generic word. It could be interpreted by a court in the future as including many and various different legal causes of action (lawsuits). Those causes of action potentially included for protection could include a multitude of types of claims for money damages and other legal remedies. On the other hand, nuisance is a very specific legal term that includes only one legal cause of action, which can be characterized as either a private nuisance or a public nuisance, and the precise meaning of that term is not ambiguous.

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- No comments; looks fine and serves the purpose intended.

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- This provides protection from both nuisance and trespass suits and the flaws with that are addressed above. Including “trespass” generically would presumably draw immediate attention and objection from the plaintiffs’ bar. The entire bill should be amended to say “nuisance and trespass to property” if anything beyond nuisance is included within the protection granted.
- Page 5, Line 1-2. For maximum protection of farmers, the text “and the activity was not a nuisance or trespass at the time the activity was initiated” is not desirable. Including this text simply invites the plaintiff in a case to simply allege “when it started it wasn’t a problem but things have now gotten worse.” That is all a plaintiff would have to do to defeat any motion to dismiss a case. The credibility of the plaintiff’s testimony about whether things have “gotten worse” will always be made a question of fact for only a jury to decide. So by including this text, every case could easily be made to require a jury trial and the accompanying expense.
- Page 5, Line 8-9. For maximum protection of farmers, the text which excludes from protection a claim which “results from the negligent operation of an agricultural activity.” That just invites the plaintiff in a case to simply allege that the actions upon which the case is based were done negligently. That is all a plaintiff would have to do to defeat any motion to dismiss a case at any time. Perhaps ironically, alleging that the claim is based upon negligent acts may be helpful in invoking insurance coverage on any policy of liability insurance held by the farmer sued.

I hope this helpful. I am writing strictly from the perspective of what would generally be in the best interest of farmers with regard to a draft of a Right to Farm Law. I am not addressing the political aspects of this draft and what might be possible to pass your legislature.