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H.407

Introduced by Representatives Nelson of Derby, Boutin of Barre City, Boyden of Cambridge, Branagan of Georgia, Burt of Cabot, Casey of Hubbardton, Charlton of Chester, Cooper of Pownal, Dobrovich of Williamstown, Feltus of Lyndon, Goslant of Northfield, Greer of Bennington, Gregoire of Fairfield, Harvey of Castleton, Higley of Lowell, Hooper of Randolph, Labor of Morgan, Laroche of Franklin, Lipsky of Stowe, Maguire of Rutland City, Morgan, L. of Milton, Morgan, M. of Milton, Morris of Springfield, Morrissey of Bennington, Nielsen of Brandon, North of Ferrisburgh, Parsons of Newbury, Pinsonault of Dorset, Powers of Waterford, Sibia of Dover, Southworth of Walden, Steady of Milton, Sweeney of Shelburne, Tagliavia of Corinth, Walker of Swanton, Wells of Brownington, and Winter of Ludlow

Referred to Committee on

Date:

Subject: Court procedure; agriculture; nuisance suits; agricultural activities;  
right-to-farm

Statement of purpose of bill as introduced: This bill proposes to amend the protection against nuisance suits for agricultural activities under the Vermont

1 right-to-farm law by providing that an agricultural activity shall not be a  
2 nuisance or trespass when the activity complies with generally accepted  
3 agricultural practices. The nuisance and trespass protection for an agricultural  
4 activity would not apply whenever a nuisance or trespass violation results from  
5 the negligent operation of an agricultural activity or from a violation of the  
6 State agricultural water quality requirements. The bill would also provide that  
7 an agricultural activity shall not lose nuisance or trespass protection due to a  
8 change of ownership or a cessation of operation of not more than ten years; a  
9 change of crops produced; or a change of a farming method or conversion of a  
10 farming practice or agricultural activity to another farming method, practice, or  
11 agricultural activity on a farm. The act would also provide that a person shall  
12 not bring a court action based on a claim of nuisance or trespass arising from  
13 an agricultural activity unless the person and the operator of the agricultural  
14 activity, at least once, attempt to resolve through mediation the issue or dispute  
15 that the person has concerning operation of the agricultural activity.

16 An act relating to protection from nuisance suits for agricultural activities

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

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 preserve the landscape  
10 and environmental resources of the State, contribute to the increase of tourism,  
11 and further the economic welfare and self-sufficiency of the people of the  
12 State; and that the encouragement, development, improvement, and  
13 preservation of agriculture will result in a general benefit to the health and  
14 welfare of the people of the State. In order for the agricultural industry to  
15 survive in this State, farms will likely change, adopt new technologies, and  
16 diversify into new products, which for some farms will mean increasing in  
17 size. The General Assembly finds that agricultural activities are potentially  
18 subject to lawsuits based on the theory of nuisance; and that these suits  
19 encourage and could force the premature removal of the farmlands and other  
20 farm resources from agricultural use. It is the purpose of this chapter to protect

1 reasonable agricultural activities conducted on the farm from nuisance  
2 lawsuits.

3 § 5752. DEFINITIONS

4 ~~For the purpose of~~ As used in this chapter;

5 (1) “agricultural activity” means, but is not limited to:

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

19 ~~(3)(C)~~ “farming” as defined in 10 V.S.A. § 6001; and

20 ~~(4)(D)~~ “agricultural activities” as defined in 6 V.S.A. § 4802.

21 (2) “Generally accepted agricultural practices” mean:

1           (A) the requirements of 6 V.S.A. chapter 215, including permit  
2           requirements or requirements of the Required Agricultural Practices;

3           (B) the requirements of the Agency of Agriculture, Food and  
4           Markets' Vermont Rule for Control of Pesticides; and

5           (C) practices conducted in a manner consistent with proper and  
6           accepted customs and standards followed by similar operators of agricultural  
7           activities in the State.

8           § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM  
9           NUISANCE LAWSUITS

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

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

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

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

17           ~~and~~

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

20           ~~(2) The presumption that the agricultural activity does not constitute a~~  
21           ~~nuisance may be rebutted by a showing that the activity has a substantial~~

1 ~~adverse effect on health, safety, or welfare, or has a noxious and significant~~  
2 ~~interference with the use and enjoyment of the neighboring property. No~~  
3 agricultural activity shall be or become a nuisance or trespass when the activity  
4 is conducted in accordance with generally accepted agricultural practices.

5 (b) ~~Nothing in this section shall be construed to limit the authority of State~~  
6 ~~or local boards of health to abate nuisances affecting the public health. A~~  
7 plaintiff alleging that an agricultural activity is a nuisance or trespass shall  
8 have the burden of proving by a preponderance of the evidence that the  
9 agricultural activity is not conducted in accordance with generally accepted  
10 agricultural practice.

11 (c) The nuisance and trespass protection for an agricultural activity  
12 provided for under subsection (a) of this section shall not apply whenever a  
13 nuisance or trespass violation results from the negligent operation of an  
14 agricultural activity.

15 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

16 (a) This chapter is remedial in nature and shall be liberally construed to  
17 effectuate its purposes.

18 (b) An agricultural activity shall not lose the nuisance or trespass protection  
19 under section 5753 of this title due to:

20 (1) a change of ownership or a cessation of operation, in whole or in  
21 part, of not more than ten years;

1           (2) a change of crops produced; or

2           (3) a change of a farming method or conversion of farming practices or  
3           agricultural activities to other farming methods, practices, or agricultural  
4           activities on a farm.

5           (c) If any provision of this chapter is held invalid, the invalidity does not  
6           affect other provisions of this chapter that can be given effect without the  
7           invalid provision, and for this purpose, the provisions of this chapter are  
8           severable.

9           § 5755. REQUIRED MEDIATION PRIOR TO SUIT

10          (a) A person shall not bring a court action based on a claim of nuisance or  
11          trespass arising from an agricultural activity unless the person and the operator  
12          of the agricultural activity, at least once, attempt to resolve through mediation  
13          the issue or dispute that the person has concerning operation of the agricultural  
14          activity. The mediation shall be conducted according to the provisions of the  
15          Uniform Mediation Act set forth in 12 V.S.A. chapter 194.

16          (b) The parties to the mediation may agree upon the use of a mediator to  
17          assist in the resolution of the agreed upon issue or dispute, and the parties shall  
18          share the cost of the mediator. If the parties to the mediation are unable to  
19          resolve the relevant issue or dispute through mediation, the parties may agree  
20          to submit the issue or dispute to binding arbitration pursuant to 12 V.S.A.  
21          chapter 192 and shall share the cost of the arbitration.

1        (c) A person bringing a court action based on a claim of nuisance or  
2        trespass arising from an agricultural activity shall provide the court with a  
3        sworn statement of an attempt to resolve the issue or dispute through  
4        mediation.

5        Sec. 2. EFFECTIVE DATE

6        This act shall take effect on July 1, 2025.