

S.45

Introduced by Senators Douglass, Beck, Brennan, Brock, Chittenden,
Clarkson, Collamore, Cummings, Gulick, Harrison, Hart,
Heffernan, Lyons, Major, Mattos, Norris, Perchlik, Watson,
Weeks, Westman, White and Williams

Referred to Committee on Judiciary

Date: February 4, 2025

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 right-to-farm law by providing that an agricultural activity shall not be a nuisance or trespass when the activity complies with generally accepted agricultural practices. The nuisance and trespass protection for an agricultural activity would not apply whenever a nuisance or trespass violation results from the negligent operation of an agricultural activity or from a violation of the State agricultural water quality requirements. The bill would also provide that an agricultural activity shall not lose nuisance or trespass protection due to a change of ownership or a cessation of operation of not more than five years; a change of crops produced; or a change of a farming method or conversion of a farming practice or agricultural activity to another farming method, practice,

1 or agricultural activity on a farm. The act would also provide that a person
2 shall not bring a court action based on a claim of nuisance or trespass arising
3 from an agricultural activity unless the person and the operator of the
4 agricultural activity, at least once, attempt to resolve through mediation the
5 issue or dispute that the person has concerning operation of the agricultural
6 activity.

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

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

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

10 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
11 ACTIVITIES

12 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

13 The General Assembly finds that agricultural production is a major
14 contributor to the State's economy; that agricultural lands constitute unique
15 and irreplaceable resources of statewide importance; that the continuation of
16 existing and the initiation of new agricultural activities preserve the landscape
17 and environmental resources of the State, contribute to the increase of tourism,
18 and further the economic welfare and self-sufficiency of the people of the
19 State, and that the encouragement, development, improvement, and

1 ~~preservation of agriculture will result in a general benefit to the health and~~
2 welfare of the people of the State. In order for the agricultural industry to
3 survive in this State, farms will likely change, adopt new technologies, and
4 diversify into new products, which for some farms will mean increasing in
5 size. The General Assembly finds that agricultural activities are potentially
6 subject to lawsuits based on the theory of nuisance, and that these suits
7 encourage and could force the premature removal of the farmlands and other
8 farm resources from agricultural use. It is the purpose of this chapter to
9 protect reasonable agricultural activities conducted on the farm from nuisance
10 lawsuits.

11 § 5752. DEFINITIONS

12 ~~For the purpose of~~ As used in this chapter,

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

14 (1)(A) the cultivation or other use of land for producing food, fiber,
15 Christmas trees, maple sap, or horticultural and orchard crops; the raising,
16 feeding, or management of domestic animals as defined in 6 V.S.A. § 1151 or
17 bees; the operation of greenhouses; the production of maple syrup; the on-site
18 storage, preparation, and sale of agricultural products principally produced on
19 the farm; and the on-site production of fuel or power from agricultural
20 ~~products or wastes principally produced on the farm,~~

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

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

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

9 ~~(2) “Generally accepted agricultural practices” mean:~~

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

12 ~~(B) the requirements of the Agency of Agriculture, Food and~~
13 ~~Markets’ Vermont Rule for Control of Pesticides; and~~

14 ~~(C) practices conducted in a manner consistent with proper and~~
15 ~~accepted customs and standards followed by similar operators of agricultural~~
16 ~~activities in the State.~~

17 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
18 NUISANCE LAWSUITS

19 ~~(a)(1) Agricultural activities shall be entitled to a rebuttable presumption~~
20 ~~that the activity does not constitute a nuisance if the agricultural activity meets~~
21 ~~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. No~~
12 ~~agricultural activity shall be or become a nuisance or trespass when the activity~~
13 ~~is conducted in accordance with generally accepted agricultural practices.~~
14 ~~(b) Nothing in this section shall be construed to limit the authority of State~~
15 ~~or local boards of health to abate nuisances affecting the public health. A~~
16 ~~plaintiff alleging that an agricultural activity is a nuisance or trespass shall~~
17 ~~have the burden of proving by a preponderance of the evidence that the~~
18 ~~agricultural activity is not conducted in accordance with generally accepted~~
19 ~~agricultural practice.~~
20 ~~(c) The nuisance and trespass protection for an agricultural activity~~
21 ~~provided for under subsection (a) of this section shall not apply whenever a~~

1 nuisance or trespass violation results from the negligent operation of an
2 agricultural activity.

3 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

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

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

8 (1) a change of ownership or a cessation of operation, in whole or in
9 part, of not more than five years;

10 (2) a change of crops produced; or

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

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

18 § 5755. REQUIRED MEDIATION PRIOR TO SUIT

19 (a) A person shall not bring a court action based on a claim of nuisance or
20 trespass arising from an agricultural activity unless the person and the operator
21 of the agricultural activity, at least once, attempt to resolve through mediation

1 ~~the issue or dispute that the person has concerning operation of the agricultural~~
2 activity. The mediation shall be conducted according to the provisions of the
3 Uniform Mediation Act set forth in 12 V.S.A. chapter 194.

4 (b) The parties to the mediation may agree upon the use of a mediator to
5 assist in the resolution of the agreed upon issue or dispute, and the parties shall
6 share the cost of the mediator. If the parties to the mediation are unable to
7 resolve the relevant issue or dispute through mediation, the parties may agree
8 to submit the issue or dispute to binding arbitration pursuant to 12 V.S.A.
9 chapter 192 and shall share the cost of the arbitration.

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

14 Sec. 2. EFFECTIVE DATE

15 ~~This act shall take effect on July 1, 2025.~~

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

*CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
ACTIVITIES*

§ 5751. LEGISLATIVE FINDINGS AND PURPOSE

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.

§ 5752. DEFINITIONS

For the purpose of As used in this chapter;

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

~~(A)~~ (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 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;

~~(2)~~ (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;

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

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

(2) “Generally accepted agricultural practices” mean:

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

(B) the requirements of an active Concentrated Animal Feeding Operation permit issued under 10 V.S.A. chapter 47, where applicable;

(C) the requirements of the Agency of Agriculture, Food and Markets’ Vermont Rule for Control of Pesticides; and

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

(3) "Good standing with the State" means a person conducting an agricultural activity that is the basis of a nuisance claim does not have an active, unresolved enforcement violation stemming from the agricultural activity at issue that has reached a final order with the Secretary of Natural Resources or the Secretary of Agriculture, Food and Markets.

§ 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
NUISANCE LAWSUITS

(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:

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

(B) it is consistent with good agricultural practices;

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

and

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

(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. No agricultural activity shall be or become a nuisance when the activity is conducted in accordance with generally accepted agricultural practices.

(b)(1) 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. In order to assert nuisance protection under this chapter, a person conducting an agricultural activity shall demonstrate that the person is in good standing with the State. A person may demonstrate good standing by providing letters of good standing to a court from the Secretary of Agriculture, Food and Markets; the Secretary of Natural Resources; or both secretaries, as relevant to the nuisance claim.

(2) A plaintiff alleging that an agricultural activity is a nuisance shall have the burden of proving by a preponderance of the evidence that:

(A) the agricultural activity at issue is not entitled to the nuisance protection provided for under subsection (a) of this section because the agricultural activity is not conducted in accordance with generally accepted agricultural practice; and

(B) if the plaintiff proves the agricultural activity is not entitled to nuisance protection under subsection (a) of this section, the required elements of their nuisance claim.

~~(C) The nuisance protection for an agricultural activity provided for under subsection (a) of this section shall not apply whenever:~~

~~(1) a nuisance violation results from the negligent operation of an agricultural activity;~~

~~(2) the agricultural activity has a substantial adverse effect on health, safety, or welfare; or~~

~~(3) the agricultural activity has a noxious and significant interference with the use and enjoyment of the neighboring property.~~

(c) The nuisance protection for an agricultural activity provided for under subsection (a) of this section shall not apply if the plaintiff demonstrates one or more of the following:

(1) A nuisance violation results from the negligent operation of an agricultural activity.

(2) The agricultural activity has a substantial adverse effect on health, safety, or welfare based upon objective, documented medical or scientific evidence that the agricultural activity was the proximate cause of the alleged effect.

(3) A reasonable person would find that the agricultural activity was a proximate cause of a noxious and significant interference with the use and enjoyment of the neighboring property.

(d) This chapter shall not restrict or impede the authority of the State to protect the public health, safety, environment, or welfare.

§ 5754. LIBERAL CONSTRUCTION; SEVERABILITY

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

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

§ 5754a. REQUIRED MEDIATION PRIOR TO SUIT

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

(b) The parties to the mediation may agree upon the use of a mediator to assist in the resolution of the agreed-upon issue or dispute, and the parties shall share the cost of the mediator equally or according to an agreement between the parties. If the parties to the mediation are unable to resolve the relevant issue or dispute through mediation, the parties may agree to submit the issue or dispute to binding arbitration pursuant to chapter 192 of this title and shall share the cost of the arbitration.

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2025.