

1 S.45

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

3 The House proposes to the Senate to amend the bill by striking out all after
4 the enacting clause and inserting in lieu thereof the following:

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

6 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
7 ACTIVITIES

8 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

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

1 encourage and could force the premature removal of the farmlands and other
2 farm resources from agricultural use. It is the purpose of this chapter to protect
3 reasonable agricultural activities conducted on the farm from nuisance
4 lawsuits.

5 § 5752. DEFINITIONS

6 ~~For the purpose of~~ As used in this chapter,:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~and~~

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

11 ~~(2) The presumption that the agricultural activity does not constitute a~~
12 ~~nuisance may be rebutted by a showing that the activity has a substantial~~
13 ~~adverse effect on health, safety, or welfare, or has a noxious and significant~~
14 ~~interference with the use and enjoyment of the neighboring property. No~~
15 ~~agricultural activity shall be or become a nuisance when the activity is~~
16 ~~conducted in accordance with generally accepted agricultural practices.~~

17 ~~(b)(1) Nothing in this section shall be construed to limit the authority of~~
18 ~~State or local boards of health to abate nuisances affecting the public health. In~~
19 ~~order to assert nuisance protection under this chapter, a person conducting an~~
20 ~~agricultural activity shall demonstrate that the person is in good standing with~~
21 ~~the State. A person may demonstrate good standing by providing letters of~~

1 good standing to a court from the Secretary of Agriculture, Food and Markets;
2 the Secretary of Natural Resources; or both secretaries, as relevant to the
3 nuisance claim.

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

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

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

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

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

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

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

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

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

10 § 5754a. REQUIRED MEDIATION PRIOR TO SUIT

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

17 (b) The parties to the mediation may agree upon the use of a mediator to
18 assist in the resolution of the agreed-upon issue or dispute, and the parties shall
19 share the cost of the mediator equally or according to an agreement between
20 the parties. If the parties to the mediation are unable to resolve the relevant
21 issue or dispute through mediation, the parties may agree to submit the issue or

1 dispute to binding arbitration pursuant to chapter 192 of this title and shall
2 share the cost of the arbitration.

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

6 Sec. 2. EFFECTIVE DATE

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