
AGENCY OF AGRICULTURE FOOD AND MARKETS

April 22, 2025

CURRENT RIGHT TO FARM PROTECTION

Attachment A

Broad Overview:

- 1) Solid: Statutory Findings and Purpose, Definitions
- 2) Weak: Statutory Nuisance Protection
 - a) Only a rebuttable presumption
 - b) Farmers have the burden of proof, and must prove their affirmative defense by demonstrating compliance with many ambiguous factors
 - c) Even if the farmer proves the defense, Plaintiff can overcome it
 - d) Results in circular and complicated litigation with many questions of “fact”—which is expensive, time consuming, and promotes uncertainty
- 3) Farm’s compliance standard is not defined, so farmers do not know how to comply, and individual neighbors/courts determine the law through court actions/decisions instead of by the legislature establishing an appropriate compliance standard
- 4) Applies to common law private nuisance claims—not applicable to nuisances impacting public health

The Vermont Statutes Online

The Statutes below include the actions of the 2024 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 12: Court Procedure

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. (Added 1981, No. 68, eff. May 1, 1981; amended 2003, No. 149 (Adj. Sess.), § 12, eff. June 3, 2004.)

§ 5752. Definitions

For the purpose of this chapter, "agricultural activity" means, but is not limited to:

(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;

(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;

(3) "farming" as defined in 10 V.S.A. § 6001; and

(4) "agricultural activities" as defined in 6 V.S.A. § 4802. (Added 1981, No. 68, eff. May 1, 1981; amended 2003, No. 149 (Adj. Sess.), § 12, eff. June 3, 2004; 2021, No. 162 (Adj. Sess.), § 12, eff. June 1, 2022.)

§ 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.

(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. (Added 1981, No. 68, eff. May 1, 1981; amended 2003, No. 149 (Adj. Sess.), § 12, eff. June 3, 2004.)

§ 5754. Severability

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. (Added 2003, No. 149 (Adj. Sess.), § 12, eff. June 3, 2004.)

S.45 AS PASSED BY SENATE (25-5)

Attachment B

Broad Overview of Senate's Proposed Changes:

- 1) Establishes a cognizable compliance standard (farms must follow water quality and pesticide requirements, and practices consistent with proper and accepted customs and standards followed by similar operators in Vermont)
- 2) Provides Plaintiff a “negligent operation” carveout—meaning Plaintiff may still prevail if a farm is compliant but the method of compliance does not conform to standard of ordinary care
- 3) Shifts the burden of proof to Plaintiff—which is standard. (Instead of requiring farmers to broadly prove they did everything right, Plaintiff must prove the farmer is doing something wrong.)
- 4) Expands the nuisance protection to include Trespass
- 5) Effectuates the existing statutory “purpose” language by allowing farms to adapt and change
- 6) Requires Plaintiff to attempt to mediate before filing suit
- 7) Silent on public nuisance

Position:

AAFM supports

1 S.45

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

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

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

5 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
6 ACTIVITIES

7 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

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

1 farm resources from agricultural use. It is the purpose of this chapter to protect
2 reasonable agricultural activities conducted on the farm from nuisance
3 lawsuits.

4 § 5752. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~and~~

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

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

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

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

17 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

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

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

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

3 (2) a change of crops produced; or

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

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

11 § 5755. REQUIRED MEDIATION PRIOR TO SUIT

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

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

1 to submit the issue or dispute to binding arbitration pursuant to 12 V.S.A.
2 chapter 192 and shall share the cost of the arbitration.

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

7 Sec. 2. EFFECTIVE DATE

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

DRAFT NO. 2.1 BEFORE THE HOUSE JUDICIARY COMMITTEE

Attachment C

Broad Overview of Proposed Changes to the Senate bill:

- 1) Removes Trespass protection
- 2) Defines Nuisance to include some claims that may also lie in Trespass, but excludes water claims from protection
 - a) Contemplates providing limited water protection for 25-year/24-hour flood events or equivalent storms with a 4% annual probability
- 3) Adopts the existing circular standard that allows Plaintiff to overcome nuisance protection by showing a substantial adverse effect on public health and safety
- 4) Adds CAFO compliance requirement
- 5) Adds “good standing” requirement for farms to benefit from nuisance protection

Position:

AAFM supports, but:

- a) AAFM prefers to retain Trespass protection—especially for those activities properly conducted on farms’ own land
- b) AAFM believes the additional nuisance “water” language is unnecessary and confusing—particularly if trespass protection is not included and “water” is not included in the nuisance definition
- c) AAFM does not believe the defined trespass protection is likely to result in constitutional “takings,” but any potential infirmity can be cured by adding a carveout rather than abandoning the perfectly viable protection
- d) AAFM opposes Plaintiff’s ability to overcome private nuisance protection by showing an adverse impact on public health and safety, including because the protection does not cover public nuisances

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 45
3 entitled “An act relating to protection from nuisance suits for agricultural
4 activities” respectfully reports that it has considered the same and recommends
5 that the House propose to the Senate that bill be amended by striking out all
6 after the enacting clause and inserting in lieu thereof the following:

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

8 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
9 ACTIVITIES

10 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

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

1 size. The General Assembly finds that agricultural activities are potentially
2 subject to lawsuits based on the theory of nuisance; and that these suits
3 encourage and could force the premature removal of the farmlands and other
4 farm resources from agricultural use. It is the purpose of this chapter to protect
5 reasonable agricultural activities conducted on the farm from nuisance
6 lawsuits.

7 § 5752. DEFINITIONS

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

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

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

17 ~~(2)(B)~~ the preparation, tilling, fertilization, planting, protection,
18 irrigation, and harvesting of crops; the composting of material principally
19 produced by the farm or to be used at least in part on the farm; the ditching and
20 subsurface drainage of farm fields and the construction of farm ponds; the

1 handling of livestock wastes and by-products; and the on-site storage and
2 application of agricultural inputs, including lime, fertilizer, and pesticides;

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

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

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

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

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

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

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

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

1 (4) “Nuisance” means any interference with reasonable use and
2 enjoyment of land, including interference from smoke, odors, particulate
3 matter, dust, noise, or vibration. “Nuisance,” as used in this chapter, includes
4 all claims that meet the requirements of this definition regardless of whether a
5 complainant designates a claim as brought in nuisance, negligence, trespass, or
6 any other area of law or equity.

7 **Alternative 1** (5) “25-year, 24-hour rainfall event” means a
8 precipitation event with a probable recurrence of once in 25 years as defined
9 by the National Weather Service [in Technical Paper No. 40, “Rainfall
10 Frequency Atlas of the United States,” May, 1961] or an equivalent federal,
11 regional, or State rainfall probability.

12 **Alternative 2** (5) “Annual exceedance probability” means the
13 likelihood, expressed as a percentage, that a flood of a certain size or larger
14 will occur in any given year as determined by the U.S. Geological Survey, the
15 National Weather Service, or other relevant federal, regional, or State entity.

16 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
17 NUISANCE LAWSUITS

18 ~~(a)(1) Agricultural activities shall be entitled to a rebuttable presumption~~
19 ~~that the activity does not constitute a nuisance if the agricultural activity meets~~
20 ~~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 when the activity is~~
13 ~~conducted in accordance with generally accepted agricultural practices.~~

14 ~~(b)(1) Nothing in this section shall be construed to limit the authority of~~
15 ~~State or local boards of health to abate nuisances affecting the public health. In~~
16 ~~order to assert nuisance protection under this chapter, a person conducting an~~
17 ~~agricultural activity shall demonstrate that the person is in good standing with~~
18 ~~the State. A person may demonstrate good standing by providing letters of~~
19 ~~good standing to a court from the Secretary of Agriculture, Food and Markets,~~
20 ~~the Secretary of Natural Resources, or both secretaries, as relevant to the~~
21 ~~nuisance claim.~~

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

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

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

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

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

14 (2) the agricultural activity has a substantial adverse effect on public
15 health and safety.

16 (d) The nuisance protection provided for under subsection (a) of this
17 section shall not affect the right of any person to recover for any injuries or
18 damages sustained by the person due to an agricultural activity:

19 (1) polluting waters of the State or groundwater; or

1 Alternative 1 (2) causing runoff to or flooding of the person's land
2 unless the runoff or flooding was caused by a 25-year, 24-hour or larger
3 rainfall event.

4 Alternative 2 (2) causing runoff to or flooding of the person's land
5 unless the runoff or flooding was caused by a flood event with an annual
6 exceedance probability of four percent or lower.

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

9 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

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

12 (b) An agricultural activity shall not lose the nuisance protection under
13 section 5753 of this title due to:

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

16 (2) a change of crops produced; or

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

20 (c) If any provision of this chapter is held invalid, the invalidity does not
21 affect other provisions of this chapter that can be given effect without the

1 invalid provision, and for this purpose, the provisions of this chapter are
2 severable.

3 § 5754a. REQUIRED MEDIATION PRIOR TO SUIT

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

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

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

20 Sec. 2. EFFECTIVE DATE

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

1

2

3

4

5 (Committee vote: _____)

6

7

8

Representative _____

FOR THE COMMITTEE

