

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 ~~(1)(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.

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5 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE