

## MEMORANDUM

To: Small Business Law Clinic and Vermont Horse Council

From: Devin G. Brennan

Date: October 3rd, 2024

Re: Vermont Statutes Relevant to Equine Businesses

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### Introduction

Two main parts comprise this document. The first part briefly summarizes the second part, which identifies Vermont statutes relevant to equine businesses.

### I. Summary

Equine businesses may generally constitute farming in two ways. First, the raising, feeding, or management of equines constitutes farming under 10 V.S.A. §§ 6001(22)(B), (32). Second, the raising, feeding, or management of four or more equines the farmer owns or boards, “including training, showing, and providing instruction and lessons in riding, training, and the management of equines” constitutes farming under 10 V.S.A. § 6001(22)(G). Generally, a business engaging in either of these activities engages in farming under Vermont’s statutes.

Exceptions are notable. Vermont’s Current Use statutes (i.e., 32 V.S.A. §§ 3750–77) exclude many forms of equine businesses from the definitions of “agricultural land,” “farmer,” and “farm buildings” that do not satisfy certain conditions, thereby disqualifying those businesses from tax relief from current use.

## II. Relevant Vermont Statutes, Ordered by Title

### A. Title 6: Agriculture

#### 1. Chapter 63: Livestock-Related Businesses, Auctions, and Sales Rings. 6 V.S.A. §§ 761–72.

1.1. “‘Livestock dealer’ means a person [*n.b.*, “‘[p]erson’ means any individual, partnership, unincorporated association, or corporation” under 6 V.S.A. § 761(4)] who, on the person’s own account or for commission, goes from place to place buying, selling, or transporting livestock [“‘[l]ivestock’ means . . . horses . . .” under 6 V.S.A. § 761(1)] either directly or through online or other remote transaction, or who operates a livestock auction or sales ring. “Livestock dealer” does not include: “(A) a federal agency, including any department, division, or authority within the agency; (B) a nonprofit association approved by the Secretary; or (C) a person who engages in ‘farming,’ as that term is defined in 10 V.S.A. § 6001(22), and who raises, feeds, or manages livestock as part of a farming operation when that person is buying, selling, or transporting [*n.b.*, “‘[t]ransporter’ means a livestock dealer who limits his or her activity to transporting livestock for remuneration” under 6 V.S.A. 761(5)] livestock for the person’s farm.” 6 V.S.A. § 761(2).

1.1.1. Proviso One: If an entity is a federal agency (including any department, division, or authority within the agency), then that entity is not a livestock dealer. 6 V.S.A. § 761(2).

1.1.2. Proviso Two: If an entity is a nonprofit association the Secretary has approved, then that entity is not a livestock dealer. 6 V.S.A. § 761(2).

1.1.3. Proviso Three: If an entity is (a) engaged in farming as defined in 10 V.S.A. § 6001(22) and (b) that entity “raises, feeds, or manages livestock as part

of a farming operation when [that entity] is buying, selling, or transporting livestock for [that entity]’s farm,” then that entity is not a livestock dealer. 6 V.S.A. § 761(2).

1.1.4. If (a) none of the three provisos apply, (b) an entity is an individual, partnership, unincorporated association, or corporation, and (c) that entity—(i) on the entity’s own account or for commission and (ii) either directly or through online or other remote transaction—goes from place to place buying, selling, or transporting livestock [“[l]ivestock’ means . . . horses . . .” under 6 V.S.A. § 761(1)], then that entity is a livestock dealer. 6 V.S.A. § 761(2).

1.1.5. If (a) none of the three provisos apply and (b) an entity operates a livestock auction or sales ring, then that entity is a livestock dealer. 6 V.S.A. § 761(2).

## 2. Chapter 107: Movement of Livestock and Poultry. 6 V.S.A. §§ 1459–77.

2.1. “‘Livestock’ shall have the same meaning as set forth in section 3302 of this title.” 6 V.S.A. § 1459(2).

2.1.1. “‘Livestock’ means any . . . horses, mules, or other equines, whether live or dead.” 6 V.S.A. § 3302(22).

2.1.1.1. Horses are livestock under 6 V.S.A. §§ 1459(2), 3302(22).

## 3. Chapter 215: Agricultural Water Quality. 6 V.S.A. §§ 4801–996.

3.1. “‘Farming’ has the same meaning as used in 10 V.S.A. § 6001(22).” 6 V.S.A. § 4802(2).

*B. Title 10: Conservation and Development*

1. Chapter 41: Regulation of Stream Flow. 10 V.S.A. §§ 1001–46.

1.1. “The following withdrawals shall not be subject to the requirements of subsection (a) or (b) of this section: . . . surface water withdrawals for irrigation for farming, livestock watering, or other uses for farming, as the term ‘farming’ is defined in 6 V.S.A. § 4802.” 10 V.S.A. § 1042(d).

1.1.1. “Farming” and “livestock” are seemingly undefined within the chapter.

2. Chapter 48: Groundwater Protection. 10 V.S.A. §§ 1390–1419.

2.1. “‘Farming’ means farming as the term is defined in subdivision 6001(22) of this title.” 10 V.S.A. § 1416(1).

3. Chapter 56: Public Water Supply. 10 V.S.A. §§ 1671–85.

3.1. “‘Agricultural land’ means any land, exclusive of any housesite, in active use to . . . pasture livestock. . .” 10 V.S.A. § 1671(9).

4. Chapter 151: State Land Use and Development Plans. 10 V.S.A. §§ 6001–111.

4.1. “‘Farming’ means: (A) the cultivation or other use of land for growing food, fiber . . . ; or (B) the raising, feeding, or management of livestock [*n.b.*, “[l]ivestock’ means . . . equines” under 10 V.S.A. § 6001(32)], . . . ; . . . or (G) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines . . . .” 10 V.S.A. § 6001(22).

4.1.1. “‘Livestock’ means . . . equines.” 10 V.S.A. § 6001(32).

4.1.2. If one raises, feeds, or manages horses, then one is engaged in farming. 10 V.S.A. §§ 6001(22)(B), (32).

4.1.3. If one (i) raises, feeds, or manages four or more equines (ii) the farmer (a) owns or (b) boards, “including training, showing, and providing instruction and lessons in riding, training, and the management of equines,” then one is engaged in farming. 10 V.S.A. § 6001(22)(G).

4.1.4. If one cultivates or otherwise uses land for growing food or fiber, then one is engaged in farming. 10 V.S.A. § 6001(22)(A).

### *C. Title 12: Court Procedure*

#### 1. Chapter 195: Nuisance Suits Against Agricultural Activities. 12 V.S.A. § 5751–54.

1.1. “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 . . . ; the raising, feeding, or management of domestic animals as defined in 6 V.S.A. § 1151 [*n.b.*, “‘domestic animal’ means . . . equines” under 6 V.S.A. § 1151(2)] . . . ; (3) ‘farming’ as defined in 10 V.S.A. § 6001; and (4) ‘agricultural activities’ as defined in 6 V.S.A. § 4802.” 12 V.S.A. § 5752.

1.1.1. If one cultivates or otherwise uses land for producing food or fiber, then one is engaged in an agricultural activity. 12 V.S.A. § 5752(1).

1.1.2. If one raises, feeds, or manages horses, then one is engaged in an agricultural activity. 6 V.S.A. § 1151(2); 12 V.S.A. § 5752.

1.1.3. If one farms as defined under 10 V.S.A. § 6001, then one is engaged in an agricultural activity. 12 V.S.A. § 5752(3).

1.1.4. If one is engaged in agricultural activities as defined under 6 V.S.A. § 4802, then one is engaged in an agricultural activity. 12 V.S.A. § 5752(4).

*D. Title 24: Municipal and County Government*

1. Chapter 117: Municipal and Regional Planning and Development. 24 V.S.A. §§ 4301–4498.

1.1. “‘Farm’ means a parcel or parcels owned, leased, or managed by a person, devoted primarily to farming, and subject to the RAP rules. For leased lands to be part of a farm, the lessee must exercise control over the lands to the extent they would be considered as part of the lessee’s own farm. Indicators of such control include whether the lessee makes day-to-day decisions concerning the cultivation or other farming-related use of the leased lands and whether the lessee manages the land for farming during the lease period.” 24 V.S.A. § 4412(11)(A)(ii).

1.1.1. For any parcel or parcels of land [in Vermont], if (i) a person owns, leases, or manages that land, (ii) that land is primarily devoted to farming, (iii) the RAP rules apply to that land, and (iv) if the person leases the land, the lessee sufficiently controls the leased lands to be considered part of a farm, then that land is a farm. 24 V.S.A. § 4412(11)(A)(ii).

1.1.1.1. If the lessee (i) makes day-to-day decisions about the leased lands’ cultivation or other farming-related uses and (ii) manages the land for farming during the leased period, these conditions indicate control. *Id.*

1.2. “‘Farming’ shall have the same meaning as in 10 V.S.A. § 6001.” 24 V.S.A. § 4412(11)(A)(iii).

E. Title 32: Taxation and Finance

1. Chapter 124: Agricultural Lands and Forestlands. 32 V.S.A. §§ 3750–77.

1.1. “Agricultural lands.”

1.1.1. If land (i) lacks a housesite, (ii) is at least twenty-five acres in size, and (iii) is in active use to grow hay or cultivated crops, that land is agricultural land. 32 V.S.A. § 3752(1).

1.1.1.1. “‘Housesite’ means the two acres of land surrounding a dwelling.” 32 V.S.A. § 3752(8).

1.1.2. If land (i) lacks a housesite, (ii) is at least twenty-five acres in size, and (iii) is in active use to pasture livestock [*n.b.*, “livestock” remains undefined under this chapter], that land is agricultural land. 32 V.S.A. § 3752(1).

1.1.3. If land (i) lacks a housesite, (ii) is at least twenty-five acres in size, and (iii) is in active use to cultivate trees bearing edible fruit, that land is agricultural land. 32 V.S.A. § 3752(1).

1.1.4. If land (i) lacks a housesite, (ii) is at least twenty-five acres in size, and (iii) is in active use to produce an annual maple product, that land is agricultural land. 32 V.S.A. § 3752(1).

1.1.5. If land is defined and required as a buffer zone in the Agency of Agriculture, Food and Markets’ Required Agricultural Practices rule (adopted under 6 V.S.A. chapter 215), then that land is agricultural land. 32 V.S.A. § 3752(1).

1.1.6. If a farmer owns land and that land is part of the overall farm unit, then that land is presumptively used for agricultural purposes. 32 V.S.A. § 3752(1)(A).

1.1.7. If land is part of a farmer's operation under written lease for at least three years, then that land is presumptively used for agricultural purposes. 32 V.S.A. § 3752(1)(B).

1.1.8. If (i) the sales of farm crops from land yield an annual gross income in (a) one of two or (b) three of the five calendar years preceding of at least (ii) (a) \$2,000.00 for parcels maximally twenty-five acres and (b) \$75.00 per acre for each acre over twenty-five acres with the total income required not to exceed \$5,000.00 and (iii) no exception to the income requirements have been made for orchard lands planted to fruit-producing trees, bushes, or vines not yet of bearing age, then that land is presumptively used for agricultural purposes. 32 V.S.A. § 3752(1)(C).

## 1.2. "Farmer."

1.2.1. If a person earns at least half of the person's annual gross income from the business of farming as defined under 26 C.F.R. § 1.175-3 (1986) [*n.b.*, under 26 C.F.R. § 1.175-3, if one (i) is a taxpayer and (ii) cultivates, operates, or manages a farm for gain or profit (either as owner or tenant), then one is engaged in the business of farming], then one is a farmer. 32 V.S.A. § 3752(7)(A).

1.2.2. If one (i) produces farm crops processed in a farm facility situated on land the farmer has enrolled in a use value appraisal program or on a housesite adjoining the enrolled land, (ii) the sum of (a) the gross income from the sale of the processed farm products pursuant to (i) here and (b) other gross income from



farming (as defined under 32 V.S.A. § 3752(7)(A)) is at least half the farmer's annual gross income, and (iii) produces on the farm a minimum of 75% of the farm crops processed in the farm facility, then one is a farmer. 32 V.S.A. § 3752(7)(B).

1.2.2.1. “The Agency of Agriculture, Food and Markets shall assist the Director in making determinations of eligibility pursuant to subdivision (B) of this subdivision (7).” 32 V.S.A. § 3752(7)(C).

### 1.3. “Farm buildings.”

1.3.1. For any farm building or other farm improvement [in Vermont], if (i) a farmer actively uses that building or improvement as part of a farming operation, (ii) the farmer owns or leases that building or improvement under a written lease for a term of at least three years, and (iii) that building or improvement occurs (a) on land in a use value appraisal program or (b) on a housesite adjoining enrolled land, then that building or improvement is a farm building. 32 V.S.A. § 3752(14).

1.3.2. For any farm facility processing farm crops [in Vermont], if (i) that facility is at most \$100,000.00 in value, (ii) at least 75% of farm crops processed in that facility are produced on the farm, and (iii) that facility is not a dwelling other than a dwelling in use within the past year exclusively to house at least one farm employee (as defined under 9 V.S.A. § 4469a) and the employee's (or employees') families as a nonmonetary benefit of the farm employment, then that facility is a farm building. 32 V.S.A. § 3752(14).

1.3.3. These definitions of “farming building” under 32 V.S.A. § 3752(14) affect neither the application of the definition of “farming” in 10 V.S.A. § 6001(22) nor

the definition of “farm structure” in 24 V.S.A. § 4413(d)(1). 32 V.S.A. § 3752(14).

2. Chapter 125: Exemptions. 32 V.S.A. §§ 3800–50.

2.1. Horses are exempt from property taxes. 32. V.S.A. § 3802(8).

### **III. Required Agricultural Practices Rule**

1. “Livestock.”

1.1. Horses are livestock. Required Agric. Practice 2.24.

2. “Farm.”

2.1. For any parcel or parcels of land [in Vermont], if (i) a person owns, leases, or manages that land, (ii) that land is primarily devoted to farming as defined under § 2.16 of the RAP rule, (iii) that land meets the threshold criteria as established under § 3 of the RAP rule, and (iv) if the person leases the land, the lessee sufficiently controls the leased lands to be considered part of the lessee’s own farm, then that land is a farm. Required Agric. Practice 2.14.

2.1.1. If the lessee (i) makes day-to-day decisions about the leased lands’ cultivation or other farming-related uses and (ii) manages the land for farming during the leased period, these conditions indicate control. *Id.*

3. “Farm Structure.”

3.1. If a person (i) uses a structure for farming (including a silo, a building to house livestock or raise horticultural or agronomic plants, or customarily used to carry out agricultural practices defined under § 3.2 of this rule) and (ii) the person that uses that

structure can demonstrate meeting the minimum threshold criteria as found in § 3.1 of this rule, then that structure is a farm structure. Req. Agric. Practice 2.15.

3.2. If a structure is (i) (a) a barnyard or (b) waste management system and (ii) created from an assembly of materials, including the supporting fill necessary for structural integrity but excluding human habitation, then that structure is a farm structure. *Id.*

#### 4. “Farming”

4.1. If one raises, feeds, or manages livestock (incl. horses under Required Agric. Practice 2.24.), then one is engaged in farming. Required Agric. Practice 2.16(b).

4.2. If one (i) raises, feeds, or manages four or more equines (ii) the farmer (a) owns or (b) boards, “including training, showing, and providing instruction and lessons in riding, training, and the management of equines,” then one is engaged in farming. Required Agric. Practice 2.16(g).