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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

Date:

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, or

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

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

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

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

9 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
10 ACTIVITIES

11 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

12 The General Assembly finds that agricultural production is a major
13 contributor to the State's economy; that agricultural lands constitute unique
14 and irreplaceable resources of statewide importance; that the continuation of
15 existing and the initiation of new agricultural activities preserve the landscape
16 and environmental resources of the State, contribute to the increase of tourism,
17 and further the economic welfare and self-sufficiency of the people of the
18 State; and that the encouragement, development, improvement, and
19 preservation of agriculture will result in a general benefit to the health and
20 welfare of the people of the State. In order for the agricultural industry to

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

9 § 5752. DEFINITIONS

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

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

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

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

1 subsurface drainage of farm fields and the construction of farm ponds; the
2 handling of livestock wastes and by-products; and the on-site storage and
3 application of agricultural inputs, including lime, fertilizer, and pesticides;

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

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

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

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

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

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

14 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
15 NUISANCE LAWSUITS

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

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

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

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

2 and

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

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

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

17 (c) The nuisance and trespass protection for an agricultural activity
18 provided for under subsection (a) of this section shall not apply whenever a
19 nuisance or trespass violation results from the negligent operation of an
20 agricultural activity.

1 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

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

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

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

8 (2) a change of crops produced; or

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

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

16 § 5755. REQUIRED MEDIATION PRIOR TO SUIT

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

1 activity. The mediation shall be conducted according to the provisions of the
2 Uniform Mediation Act set forth in 12 V.S.A. chapter 194.

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

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

13 Sec. 2. EFFECTIVE DATE

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