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S.268

Introduced by Senators Parent, Brock and Starr

Referred to Committee on

Date:

Subject: Agriculture; court procedure; right to farm; nuisance

Statement of purpose of bill as introduced: This bill proposes to amend the right-to-farm law to provide that a farm or farm operation shall not be found to be a public or private nuisance under one or more of the following: the farm or farm operation existed before a change in the land use or occupancy in proximity to the farm, and if before that change in land use or occupancy of the farm, the farm or farm operation would not have been a nuisance; the farm or farm operation alleged to be a nuisance conforms to State and federal law; or the farm or farm operation has been conducting the agricultural activity at issue for two or more years prior to the date a nuisance action is commenced.

The bill also would provide that if a farm or farm operation prevails in a nuisance suit brought against it, the court shall require the plaintiff to pay the actual amount of costs and expenses incurred by the farm or farm operation in defense, including attorney's fees.

An act relating to the right to farm

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

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

3 CHAPTER 195. NUISANCE SUITS AGAINST ~~AGRICULTURAL~~
4 ~~ACTIVITIES~~ FARM OPERATIONS

5 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

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

1 purpose of this chapter to protect ~~reasonable agricultural activities conducted~~
2 ~~on the farm~~ farm operations from nuisance lawsuits.

3 § 5752. DEFINITIONS

4 ~~For the purpose of this chapter, “agricultural~~ As used in this chapter:

5 (1) “Agricultural activity” means, but is not limited to:

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

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

19 (C) farming as defined under 10 V.S.A. § 6001(22).

20 (2) “Farm” means the land, plants, animals, buildings, or structures on a
21 parcel of land used for farming.

1 (3) “Farm operation” means the operation and management of a farm or
2 a condition or activity that occurs at any time as necessary on a farm, including
3 all those activities defined as “agricultural activity” and all of the following:

4 (A) marketing produce at roadside stands or farm markets;

5 (B) the generation of noise, odors, dust, fumes, and other associated
6 conditions;

7 (C) the composting of material principally produced by the farm or to
8 be used at least in part on the farm;

9 (D) the ditching and subsurface drainage of farm fields and the
10 construction of farm ponds;

11 (E) the handling of livestock wastes and by-products;

12 (F) the operation of machinery and equipment necessary for a farm,
13 including irrigation and drainage systems, pumps, and on-farm grain dryers;

14 (G) the movement of vehicles, machinery, equipment, and farm
15 products and associated inputs necessary for farm operations on the roadway;

16 (H) field preparation and ground and aerial seeding and spraying;

17 (I) the on-site storage and application of agricultural inputs, including
18 lime, fertilizer, organic materials, conditioners, and pesticides;

19 (J) the use of alternative pest management techniques;

20 (K) the management, storage, transport, utilization, and application of
21 farm by-products, including manure or agricultural wastes;

1 (L) the conversion from one farm operation to another farm
2 operation; and

3 (M) the employment and use of labor.

4 (4) "Farm product" means those products produced by an agricultural
5 activity that are sold in commerce or otherwise used by humans, including
6 forages and sod crops, grains and feed crops, field crops, dairy and dairy
7 products, poultry and poultry products, livestock and livestock products, bees
8 and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses,
9 nursery stock, trees and tree products, or any other product produced from
10 farming.

11 (5) "Livestock" means cattle, cow or calf pairs, youngstock, heifers,
12 bulls, American bison, swine, sheep, goats, horses, cervids, camelids, ratites,
13 rabbits, pheasants, chukar partridge, coturnix quail, laying hens, broiler
14 chickens, ducks, turkeys, or any other type of animal or fowl designated as
15 livestock by the Secretary of Agriculture, Food and Markets under the
16 Required Agricultural Practices.

17 § 5753. ~~AGRICULTURAL ACTIVITIES;~~ FARM OPERATIONS;

18 PROTECTION FROM NUISANCE LAWSUITS

19 ~~(a)(1) Agricultural activities shall be entitled to a rebuttable presumption~~
20 ~~that the activity does not constitute a nuisance if the agricultural activity meets~~
21 ~~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.~~

12 (a) A farm or farm operation shall not be found to be a public or private
13 nuisance under one or more of the following:

14 (1) The farm or farm operation existed before a change in the land use
15 or occupancy of land in proximity to the farm, and if before that change in land
16 use or occupancy of the farm, the farm or farm operation would not have been
17 a nuisance.

18 (2) The farm or farm operation alleged to be a nuisance is in good
19 standing with the Secretary of Agriculture, Food and Markets under 6 V.S.A.
20 chapter 215.

1 (3) The farm or farm operation has been conducting the agricultural
2 activity at issue for two or more years prior to the date a nuisance action is
3 commenced. In determining the duration of an agricultural activity on a farm
4 or farm operation, the initial date of operation shall be when the agricultural
5 activity commenced on the farm or farm operation.

6 (b) A farm or farm operation that is conforming with State and federal law
7 shall not be found to be a public or private nuisance as a result of any of the
8 following:

9 (1) a change in ownership or size;

10 (2) temporary cessation or interruption of farming;

11 (3) enrollment in governmental programs;

12 (4) adoption of new technology; or

13 (5) a change in the type of farm product being produced.

14 ~~(b)~~(c) 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.

16 * * *

17 § 5754a. AWARD OF COSTS AND EXPENSES

18 In any nuisance action brought in which a farm or farm operation is alleged
19 to be a nuisance, if the defendant farm or farm operation prevails, the court
20 shall require the plaintiff to pay the actual amount of costs and expenses
21 determined by the court to have been reasonably incurred by the farm or farm

1 operation in connection with the defense of the action, including attorney's
2 fees.

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on passage.