

ALASKA LEGISLATIVE COMMITTEE FILES 1900-1900 00/2

4287 SRES SB 409

162

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-nine

AN ACT FURTHER REGULATING THE LAW RELATIVE TO NUISANCES UPON
AGRICULTURAL AND HORTICULTURAL LANDS.

Be it enacted by the Senate and House of Representatives in General Court
assembled, and by the authority of the same, as follows:

The first paragraph of section 125A of chapter 111 of the General Laws, as appearing in chapter 469 of the acts of 1958, is hereby amended by inserting after the the word "section", in line 7, the following words:- ; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural lands shall not be deemed to constitute a nuisance.

Approved May 31, 1979.

therefor to the owner, his authorized agent, or the occupant, and shall be recoverable from such owner or occupant in an action of contract.

The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of the claims for such debt, shall apply to any debt referred to in this section, except that the board of health shall act hereunder in place of the mayor or board of selectmen. (1797, 16, § 11; RS 21, § 11; 1849, 211, § 5; GS 26, § 10; PS 80, § 23; RL 75, § 69; 1970, 649, § 1.)

Editorial Note—

The 1970 amendment rewrote the section to provide that the expenses of removal shall constitute a debt due the city or town, and that the provisions of the second paragraph of section three A of chapter one hundred and thirty-nine relative to liens are applicable to such debt and its collection.

Cross references—

As to abatement of farms and farming operations as nuisances, see § 125A, *infra*.

CASE NOTES

Board may remove nuisance by any suitable mode. *Salem v Eastern R. Co.* 98 Mass 431.

Findings of board not conclusive unless party had opportunity to be heard.—In an action by a city, under this section, against the party alleged to have caused a nuisance, to recover money expended by the board of health for removing it, if such party had no opportunity to be heard before the board, none of the findings or adjudications of the board preliminary to the incurring of such expenses are conclusive upon him, and all the facts on which the recovery is sought are

open to be controverted and must be established by the proofs. *Salem v Eastern R. Co.* 98 Mass 431.

Order under section subject to review provisions of § 125A.—See Board of Health of Franklin *v* Hass, 342 Mass 421, 173 NE2d 808.

Cities of Cambridge and Somerville.—For a case construing the St of 1872, c 299, relative to the cities of Cambridge and Somerville, which provisions are based on this and the preceding sections, see *Cambridge v Munroe*, 126 Mass 496.

§ 125A. When Farm, or Operation Thereof, Adjudged Nuisance; Action to Abate, etc., Subject to This Section; Right of Appeal, and Proceedings Thereon.

If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five shall, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section.

In the case of any such nuisance a written notice of an order to abate the same within ten days after receipt of such notice shall first be given as provided in section one hundred and twenty-four. If no petition for review is filed as herein provided, or upon final order of the court, said board may then proceed as provided in said sections one hundred and twenty-two, one

hundred and twenty-three and one hundred and twenty-five, or in the order of the court. If the owner or operator of said farm within said ten days shall file a petition for a review of such order in the district court for the district in which the farm lies, the operation of said order shall be suspended, pending the order of the court. Upon the filing of such petition the court shall give notice thereof to said board, shall hear all pertinent evidence and determine the facts, and upon the facts as so determined review said order and affirm, annul, alter or modify the same as justice may require. The parties shall have the same rights of appeal on questions of law as in other civil cases in the district courts. (1958, 469.)

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Abatement of nuisances by public authorities. 58 Am Jur 2d, Nuisances §§ 197 et seq.

CASE NOTES

Effect of section.—The instant section provides for review in the District Court of an order, under §§ 122, 123 or 125 of the instant chapter, abating a nuisance, and it further provides that the operation of such an order shall be suspended pending the order of the court. Board of Health of Franklin v Hass, 342 Mass 421, 173 NE2d 808.

Section inapplicable to prohibitory order under § 143.—The instant section, by its own terms, applies only to orders under §§ 122, 123, or 125 of the instant chapter, and it does not apply to § 143 thereof. Board of Health of Franklin v Hass, 342 Mass 421, 173 NE2d 808.

GL c. 111, § 125A is relevant only to

orders to abate nuisances issued under the sections expressly mentioned in the statute. Department of Public Health v Cumberland Cattle Co. 1972 Adv sheets 1031, 282 NE2d 895.

For the purposes of GL c. 111, § 125A there is no distinction between a piggery and a farm. Tanque v Board of Health, 47 Mass App Dec 69.

GL c. 111, § 143 and GL c. 111, §§ 146-150 have not been superseded by GL c. 111, § 125A, and these sections are applicable to a dairy farm operated as a nuisance, particularly when this is done after notice of its offensiveness. Department of Public Health v Cumberland Cattle Co. 1972 Adv sheets 1031, 282 NE2d 895.

§ 126. Location of Privy Vaults Regulated.

If the city council of a city, or a town having a population of more than one thousand, accepts this section, or has accepted corresponding provisions of earlier laws, no privy vault shall be constructed upon premises connected with a common or private sewer or abutting on a public or private street, court or passageway in which there is a common sewer opposite thereto, without permission in writing having first been obtained from the board of health. And if, in the opinion of said board, a privy vault so situated is injurious to the public health, it shall declare the same a nuisance and forbid its continuance, and the three preceding sections shall apply thereto. (1890, 74; 1899, 184; RL 75, § 70; 1910, 313.)

1910/2000

STATE OF MICHIGAN
81ST LEGISLATURE
REGULAR SESSION OF 1981

Introduced by Reps. Dodak, Alley, O'Neill, Busch, Gnedtke, Stabenow, Strand, Cropsey, Welborn, Harrington, Giese, Lincoln, Binsfeld, Spaniola, Trim, Hillegonds, Muxlow, Kennedy, Dillingham, Gingrass, Koivisto, Jacobetti, Fitzpatrick, Gilmer, Nick Smith, Hayes, DeGrow, Armbruster, Randall, McCollough, Andrews, Geerlings, Dressel, Stacey, Padden, Ballantine, Vanek, Griffin, Varnum, Nash, Van Singel and Hadden

ENROLLED HOUSE BILL No. 4054

AN ACT to provide for circumstances under which a farm shall not be found to be a public or private nuisance.

The People of the State of Michigan enact.

Sec. 1. This act shall be known and may be cited as the "Michigan right to farm act".

Sec. 2. (1) As used in this act, "farm" means the land, buildings, and machinery used in the commercial production of farm products.

(2) As used in this act, "farm operation" means a condition or activity which occurs on a farm in connection with the commercial production of farm products, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(3) As used in this act, "farm product" means those plants and animals useful to man and includes but is not limited to: forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products; livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products; or any other product which incorporates the use of food, feed, fiber or fur.

Sec. 3. (1) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy as determined by the director of the department of agriculture.

(2) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and before such change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

Sec. 4. This act shall not affect the application of state and federal statutes.

This act is ordered to take immediate effect.

Thomas S. Husband

Clerk of the House of Representatives.

Willis C. Londer

Secretary of the Senate.

Approved

.....
Governor.



Governor signs 'Right to Farm' law

Michigan's "Right to Farm Act", was signed into law by Governor Milliken during the recent National Cherry festival in Traverse City. The bill protects farmers against nuisance suits filed by new city neighbors who are not used to the byproducts of agricultural operations.

In signing the bill, Milliken commented: "We must take steps to protect this vitally important industry from undue pressures that threaten not only our ability to feed ourselves but our ability to develop and maintain a strong, diverse economy."

MDA is responsible for defining "accepted agricultural practices". Soil Conservation districts will be holding public hearings from which guidelines will be offered to the Commission of Agriculture.

HOUSE BILL NO. 331

(As sent to Governor)

1. AN ACT TO PROVIDE THAT CERTAIN AGRICULTURAL OPERATIONS SHALL
2. BE IMMUNE FROM ACTIONS TO ABATE A NUISANCE; AND FOR RELATED
3. PURPOSES.

4. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5. SECTION 1. (1) In any nuisance action, public or private,
6. against an agricultural operation, proof that said agricultural
7. operation has existed for one (1) year or more is an absolute
8. defense to such action, if the conditions or circumstances alleged
9. to constitute a nuisance have existed substantially unchanged
10. since the established date of operation.

11. (2) The following words and phrases as used in this act
12. shall have the meanings given them in this section:

13. (a) "Agricultural operation" includes, without
14. limitation, any facility for the production and processing of
15. crops, livestock, farm-raised fish and fish products, livestock
16. products, and poultry or poultry products for commercial or
17. industrial purposes.

18. (b) "Established date of operation" means the date on
19. which the agricultural operation commenced operation. If the
20. physical facilities of the agricultural operation are subsequently
21. expanded, the established date of operation for each expansion is
22. deemed to be a separate and independent "established date of
23. operation" established as of the date of commencement of the
24. expanded operation and the commencement of expanded operation
25. shall not divest the agricultural operation of a previously

26. established date of operation.

27. (3) This act shall not affect actions commenced prior to
28. July 1, 1980.

29. SECTION 2. This act shall take effect and be in force from
30. and after July 1, 1980.

Montana

47th Legislature

SB 0029/02

1 SENATE BILL NO. 29
2 INTRODUCED BY HAGER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT PERSONS WHO
5 ESTABLISH RESIDENCE OR BUSINESSES NEAR AGRICULTURAL OR
6 FARMING OPERATIONS, PLACES, ESTABLISHMENTS, OR FACILITIES
7 THAT HAVE EXISTED FOR 1 YEAR OR MORE FROM BRINGING NUISANCE
8 SUITS BASED ON OBJECTION TO THE NORMAL ODORS FROM THE
9 MAINTENANCE OF LIVESTOCK OR THE SPREADING OF MANURE;
10 AMENDING SECTIONS 27-30-101 AND 45-8-111, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 27-30-101, MCA, is amended to read:

14 "27-30-101. Definition of nuisance. (1) Anything which
15 is injurious to health, indecent or offensive to the senses,
16 or an obstruction to the free use of property, so as to
17 interfere with the comfortable enjoyment of life or
18 property, or which unlawfully obstructs the free passage or
19 use, in the customary manner, of any navigable lake, river,
20 bay, stream, canal, or basin or any public park, square,
21 street, or highway is a nuisance.

22 (2) Nothing which is done or maintained under the
23 express authority of a statute can be deemed a nuisance.

24 (3) No agricultural or farming operations, places,
25 establishments, or facility or any of its accessories or

Montana Page 2 ✓ SA 0024/02

1 the operation thereof is or becomes a public or private
2 nuisance because of the normal odors from the maintenance of
3 livestock or the spreading of manure as a result of changed
4 residential OR COMMERCIAL conditions in or around its
5 locality if the agricultural or farming operation, place,
6 establishment, or facility has been in operation for 1 year
7 or more."

8 Section 2. Section 45-8-111, MCA, is amended to read:
9 "45-8-111. Public nuisance. (1) "Public nuisance"
10 means:

11 (a) a condition which endangers safety or health, is
12 offensive to the senses, or obstructs the free use of
13 property so as to interfere with the comfortable enjoyment
14 of life or property by an entire community or neighborhood
15 or by any considerable number of persons;

16 (b) any premises where persons gather for the purpose
17 of engaging in unlawful conduct; or

18 (c) a condition which renders dangerous for passage
19 any public highway or right-of-way or waters used by the
20 public.

21 (2) A person commits the offense of maintaining a
22 public nuisance if he knowingly creates, conducts, or
23 maintains a public nuisance.

24 (3) Any act which affects an entire community or
25 neighborhood or any considerable number of persons (as

Montana Page 3

SB 0024/02

1 specified in subsection (1)(a)) is no less a nuisance
2 because the extent of the annoyance or damage inflicted upon
3 individuals is unequal.

4 (4) No agricultural or farming operation, place,
5 establishment, or facility or any of its appurtenances or
6 the operation thereof is or becomes a public nuisance
7 because of the normal odors from the maintenance of
8 livestock or the spreading of manure as a result of chan id
9 residential OR COMMERCIAL conditions in or around its
10 locality if the agricultural or farming operation, place,
11 establishment, or facility has been in operation for 1 year
12 or more.

13 †††(5) A person convicted of maintaining a public
14 nuisance shall be fined not to exceed \$500 or imprisoned in
15 the county jail for a term not to exceed 6 months, or both.
16 Each day of such conduct constitutes a separate offense."

-End-

*★ Can not say
for sure whether
this law was
enacted —*

HB 10

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and eighty-one

AN ACT

to protect agricultural operations from
nuisance suits under certain circumstances.

Be it Enacted by the Senate and House of Represen-
tatives in General Court convened:

1 Declaration of Purpose. The purpose of this chapter is to conserve and protect the development of this state's agricultural land. When nonagricultural land uses extend into agricultural areas, agricultural operations are often subjected to nuisance lawsuits. This chapter seeks to encourage agricultural operations by limiting the circumstances under which agricultural operations may be found a nuisance.

2 New Chapter. Amend RSA by inserting after chapter 430-B the following new chapters:

CHAPTER 430-C

NUISANCE LIABILITY OF AGRICULTURAL OPERATIONS

430-C:2 Agricultural Operation. "Agricultural operation" when used in this chapter includes any farm, agricultural or farming activity as defined by RSA 21:34-a.

430-C:3 Immunity from Suit. No agricultural operation shall be found a public or private nuisance as a result of changed conditions in or around the locality of the agricultural operation, if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section shall not apply when any aspect of the agricultural operation is determined to be injurious to public health or safety under RSA 147:1 or RSA 147:2.

430-C:4 Negligent or Improper Operations. The provisions of this chapter shall not apply if a nuisance results from the negligent or improper operation of an agricultural operation. Agricultural operations shall not be found to be negligent or improper when they conform to federal, state and local laws and regulations.

430-C:5 Limits. Nothing contained in this chapter shall be construed to modify or limit the duties and authority conferred upon the water supply and pollution control commission under RSA 148 or RSA 149 or the commissioner of agriculture under any of the chapters in RSA Title XL.

2 Effective Date. This act shall take effect 60 days after its passage.

HOUSE BILL NO.

10

INTRODUCED BY: Rep. Campbell of Rockingham Dist. 5

REFERRED TO: Environment and Agriculture

AN ACT to protect agricultural operations from nuisance suits under certain circumstances.

ANALYSIS

This bill prohibits the bringing of nuisance suits against agricultural operations in existence for one year or more when suit is brought because of changed conditions in the locality of the agricultural operation. Operations are not exempted from suit if they are conducted in a negligent or improper way or are a danger to public health or safety.

RIGHT-TO-FARM ACT

An Act declaring the policy of the State of New Jersey with respect to the rights of a landowner to use his land for agricultural purposes and to apply recognized methods and techniques in connection with the business of agricultural production.

Be it Enacted by the Senate and General Assembly of the State of New Jersey.

1. This act shall be known and may be cited as the "Right-to-Farm Act."
2. The Legislature finds and declares it to be the policy of the State of New Jersey that the owner of land has an inherent right reserved to the people by Article I of the State Constitution, to use the land and improvements thereon for agricultural purposes. "Agricultural purposes" means and includes but is not limited to the production, harvesting, on-farm storage, and the preparation for use, grading, packaging, processing and marketing of crops, plants, animals and other agricultural related commodities useful to man and the use and application of techniques and methods in connection with soil preparation and management, fertilization, weed, disease and pest control, waste disposal, irrigation, drainage and water management, grazing, and harvesting by man, animal or machine developed and approved by the New Jersey Agriculture Experiment Station, another land grant college, a State or Federal soil and water conservation agency, or a recognized private agricultural research organization.
3. This act will take effect immediately.

Statement

This bill would serve as an affirmation by the State of the general "right-to-farm" principles. Having such a statement on record would not only help to restore some confidence to the agricultural community but might also provide additional legal support for farmers in the event of future litigation. It is possible that this proposed act will be incorporated into another related bill to increase its effectiveness and the likelihood of its passage.

(Sleep)

STATE OF NEW YORK

S. 6408

A. 8435

1981-1982 Regular Sessions

SENATE—ASSEMBLY

May 5, 1981

IN SENATE—Introduced by Sen. COOK—read twice and ordered printed, and when printed to be committed to the Committee on Health

IN ASSEMBLY—Introduced by COMMITTEE ON RULES—(at request of M. of A. Ruggiero, Shaffer, Kidder, Hawley)—read once and referred to the Committee on Agriculture

AN ACT to amend the public health law, in relation to certain farming activities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. The public health law is amended by adding a new section
- 2 thirteen hundred-c to read as follows:
- 3 § 1300-c. Farming activities. Notwithstanding any other provision of
- 4 law, the agricultural activities conducted on a farm, as defined in sec-
- 5 tion six hundred seventy-one of the labor law, shall not be considered a
- 6 nuisance, provided such farm was established prior to the surrounding
- 7 activities and has not been determined to be the cause of conditions
- 8 dangerous to life or health as determined by the commissioner, the local
- 9 health officer or local board of health pursuant to sections thirteen
- 10 hundred, thirteen hundred-a, thirteen hundred three and thirteen hundred
- 11 four of this chapter.
- 12 § 2. This act shall take effect immediately.

EXPLANATION—Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LED1-22-27-1056

GENERAL ASSEMBLY OF NORTH CAROLINA *James*
SESSION 1979
RATIFIED BILL

CHAPTER 202

HOUSE BILL 481

AN ACT TO PROTECT AGRICULTURAL OPERATIONS FROM NUISANCE SUITS
UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is hereby amended by adding a new Article as follows:

"ARTICLE 57.

"Nuisance Liability of Agricultural Operations.

"§ 106-700. Legislative determination and declaration of policy.--It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

"§ 106-701. (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such

operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, 'agricultural operation' includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future."

Sec. 2. This act does not affect actions commenced prior to the effective date hereof.

Sec. 3. If any provisions or clause of this Article or application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 26th day of March, 1979.

JAMES C. GREEN

James C. Green

President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives

1/10/81
North Dakota

NUISANCES

CHAPTER 434

HOUSE BILL NO. 1461
(Dietz, Dotzenrod)

AGRICULTURAL OPERATION NOT A NUISANCE

AN ACT concerning agricultural operations, and providing that no such operation shall be deemed a public or private nuisance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AGRICULTURAL OPERATION - DEEMED NOT NUISANCE.

1. An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began; except that the provisions of this subsection shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation.
2. As used in this Act, "agricultural operation" means the science and art of production of plants and animals useful to man, by a corporation as provided in chapter 10-06, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.
3. The provisions of subsection 1 of this section shall not affect or defeat the right of any person to recover damages for any injury or damage sustained by him on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of lands of any such person.
4. Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this section is void; except that the provisions of this subsection shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation or from an agricultural operation located within the corporate limits of any city as of the effective date of this Act.
5. This section shall not be construed to invalidate any contracts made prior to the enactment of this Act, but, insofar as contracts are concerned, it is only applicable to contracts and agreements to be made on or after the effective date of this Act.

Approved March 16, 1981

Oklahoma

TITLE 50
NUISANCE

CHAPTER 1.—IN GENERAL

Sec.

1.1. Agricultural activities as nuisance [New].

§ 1. Nuisance defined.—A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

First. Annoys, injures or endangers the comfort, repose, health, or safety of others; or

Second. Offends decency; or

Third. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or highway; or

Fourth. In any way renders other persons insecure in life, or in the use of property, provided, this section shall not apply to preexisting agricultural activities.

Amended by Laws 1980, c. 189, § 1, eff. Oct. 1, 1980.

Section 4 of Laws 1980, c. 189 provides that this act shall become effective October 1, 1980.

Grass fire

Insurance Co. of North America v. Sbeinbein, Okl., 488 P.2d 1273 (1971).

Nuisance in general

A "nuisance," public or private, arises where a person uses his own property in such a manner as to cause injury to the property of another. Fairlawn Cemetery Ass'n v. First Presbyterian Church, U. S. A. of Oklahoma City, Okl., 495 P.2d 1185 (1972).

Obscene material

State ex rel. Field v. Hess, Okl., 540 P.2d 1165 (1975).

Oil and gas

Oil and gas lessee had duty to restore surface land not reasonably necessary for purpose of the lease. Tenneco Oil Co. v. Allen, Okl., 515 P.2d 1391 (1973).

§ 1.1. Agricultural activities as nuisance.—A. As defined in this act:

1. "Agricultural activities" shall include, but not be limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products; and

2. "Farmland" shall include, but not be limited to, land devoted primarily to production of livestock or agricultural commodities.

B. Agricultural activities conducted on farm or ranch land, if consistent with good agricultural practices and established prior to nearby nonagricultural activities, are presumed to be reasonable and do not

constitute a nuisance unless the activity has a substantial adverse affect on the public health and safety.

If that agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

Added by Laws 1980, c. 189, § 2, eff. Oct. 1, 1980.

Section 3 of Laws 1930, c. 129 provides that this section be classified as § 11 of this title. However, that classification had been previously assigned and section was editorially reclassified to avoid a duplication in numbering.

§ 2. Public nuisance.

Cutting of pipeline as private nuisance

Champlin Petroleum Co. v. Board of County Com'rs of Oklahoma County, Okl., 526 P.2d 1142 (1974).

Mandatory injunction

Ordinarily, where one liable for a nuisance fails to abate it voluntarily, abatement is accomplished through mandatory injunction. Tenneco Oil Co. v. Allen, Okl. 515 P.2d 1391 (1973).

§ 4. Statute authority.

Drainage ditch

City of Bartlesville v. Ambler, Okl., 499 P.2d 433 (1971).

§ 8. Remedies against public nuisance.

Injunction

State ex rel. Field v. Hess, Okl., 540 P.2d 1165 (1975).

Damages

Damage to realty is deemed to be permanent if irreparable or irremediable, or if remedial costs exceed value of the property. Conkin v. Ruth, Okl.App., 381 P.2d 923 (1978).

CHAPTER 2.—SLAUGHTERHOUSES AND CEMETERIES

§ 41. Location of slaughterhouse.—It shall be unlawful for any person to maintain a slaughterhouse within less than one-half mile of any tract of land platted into lots and blocks as an addition to any town or city within the State of Oklahoma, except in conformity with the zoning ordinances of said town or city, or to maintain such a slaughterhouse within one-half mile of any tract of land platted into acre tracts for the purpose of being sold for residence, and in which tracts of land have actually been sold for residence purposes outside of such a town or city.

Amended by Laws 1975, c. 306, § 1.

50 Carolina

(R534, S920)

An Act To Amend The Code Of Laws Of South Carolina, 1976, By Adding Chapter 45 To Title 46 So As To Provide That Certain Agricultural Operations Shall Not Be Considered Nuisances.

Be it enacted by the General Assembly of the State of South Carolina:

Certain agriculture operations not be considered nuisances

SECTION 1. The 1976 Code is amended by adding to Title 46:

"Chapter 45

Section 46-45-10. The General Assembly finds that:

(1) The policy of the State is to conserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.

(2) When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and as a result (a) agricultural operations are sometimes forced to cease and (b) many persons are discouraged from making investments in farm improvements.

(3) This chapter is enacted to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

Section 46-45-20. For purposes of this chapter 'agricultural operation' includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock or poultry products.

Section 46-45-30. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality of the operation after it has been in operation for more than one year when such operation was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

Section 46-45-40. The provisions of Section 46-45-30 shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by him on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow on lands of any such person.

Section 46-45-50. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement as a nuisance in derogation of this chapter shall be null and void. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. The provisions of this section shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city."

Time effective

SECTION 2. This act shall take effect upon approval by the Governor.

In the Senate House the 29th day of May

In the Year of Our Lord One Thousand Nine Hundred and Eighty.

NANCY STEVENSON,
President of the Senate.

REX L. CARTER,
Speaker of the House of Representatives.

Approved the 30th day of May, 1980.

RICHARD W. RILEY,
Governor.

Tennessee

CHAPTER NO. 138

HOUSE BILL NO. 603

By Pickering, Burnett (Sumner), Burnett (Fentress),
Robinson (Washington), DePriest, Hurley, Wolfe,
Davis (Gibson), Stafford, Richardson

Substituted for: Senate Bill No. 839

By Burks, Thomas, Blank, Harvill

AN ACT to provide limitations on rules, regulations, zoning requirements
and nuisance actions concerning feedlots, dairy farms or egg produc-
tion houses.

BE IT ENACTED BY THE GENERAL
ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this Act, unless the
context otherwise requires:

(1) "Dairy Farm" means any place or premises
where one or more cows are kept and from which a
part or all of the milk or milk products is provided,
sold or offered for sale to a milk plant, transfer
station or receiving station.

(2) "Department" means the Tennessee
Department of Public Health and includes any
officer, agency or designee of that department.

(3) "Egg Production House" means any place or
premises where chickens are kept for the production
of eggs for resale to processors, wholesalers or
retailers.

(4) "Established Date of Operation" means the
date on which a feedlot, dairy farm or egg production
house commenced operating. If the physical facilities
of the feedlot, dairy farm or egg production house are
subsequently expanded, the established date of
operation for each expansion is deemed to be a
separate and independent "established date of

operation" established as of this date of commencement of the expanded operations, and the commencement of expanded operations shall not divest the feedlot, dairy farm or egg production house of a previously established date of operation.

(5) "Established Date of Ownership" means the date of the recording of an appropriate muniment of title establishing the ownership of realty.

(6) "Rule of the Department" means a rule as defined in Tennessee Code Annotated, Title 4, Chapter 5, which materially affects the operation of a feedlot, dairy farm, or egg production house and which has been adopted by the department. Nothing in this Act shall be deemed to empower the department to make any rule.

(7) "Feedlot" means a lot, yard, corral or other area in which livestock are confined, primarily for the purposes of feeding, growing, raising, or birthing prior to slaughter. The term does not include areas which are used for the raising of crops or other vegetation upon which livestock are allowed to graze or feed.

(8) "Livestock" means cattle, sheep, swine, poultry and other animals or fowl, which are being produced primarily for use as food or food products for human consumption and horses.

(9) "Materially Affects" means prohibits or regulates with respect to the location, or the emission of noise, effluent, odors, sewage, waste or similar products resulting from the operation or the location or use of buildings, machinery, vehicles, equipment or other real or personal property used in the operation of a livestock feedlot, dairy farm or egg production house.

(10) "Nuisance" means and includes public or private nuisance as defined either by statute or by the common law.

(11) "Nuisance Action or Proceeding" means and includes every action, claim or proceeding, whether brought at law, in equity or as an administrative proceeding, which is based on nuisance.

(12) "Owner or Operator" means any person who owns, leases, operates, controls or supervises a feedlot.

(13) "Zoning Requirement" means a regulation or ordinance which has been adopted by a city, county, township, school district, or any special-purpose district or authority, which materially affects the operation of a feedlot, dairy farm or egg production house. Nothing in this Act shall be deemed to empower any agency described in this definition to make any regulation or ordinance.

(14) "Regulations" means a resolution by the county legislative body or an ordinance by the governing body of any municipality regulating or prohibiting the normal noises of animals or fowls, the noises in the operation of the equipment, the odors normally associated with any feedlot, dairy farm, or egg production house, or the preclusion of any animals or fowls from within the city or from within a defined area of the county.

SECTION 2.

(a) In any nuisance action or proceeding against a feedlot, dairy farm, or egg production house brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of such feedlot, dairy farm or egg production house, proof of compliance with Sections 3 and 4 of this Act, shall be an absolute defense, provided that the conditions or circumstances

alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with Sections 3 or 4 of this Act.

(b) In any nuisance action or proceeding against a feedlot, dairy farm or egg production house brought by or on behalf of a person whose date of ownership of realty precedes the established date of operation of such feedlot, dairy farm or egg production house, but whose actual or proposed use of such realty for residential or commercial purposes is subsequent to the established date of operation of such feedlot, dairy farm or egg production house, proof of compliance with Sections 3 and 4 of this Act, shall be an absolute defense, provided, that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with Section 3 or 4 of this Act.

(c) The normal noises of the animals or fowls, the noises in the operation of the equipment, or the odors normally associated with any feedlot, dairy farm or egg production house shall not constitute grounds for any nuisance action or proceeding against a feedlot, dairy farm or egg production house brought by or on behalf of a person whose date of ownership of realty is subsequent to the established date of operation of such feedlot, dairy farm or egg production house.

SECTION 3.

(a) This section shall apply to the department's rules except for rules required for designation of the national pollutant discharge elimination system permit program pursuant to the Federal Water Pollution Control Act, Section 402, Public Law 92-500, 33 U.S.C. 1342, as amended.

(b) The applicability of rules of the department other than those issued under the Tennessee Air Quality Act, Tennessee Code Annotated, Title 53, Chapter 34, shall be as follows:

(1) A rule of the department in effect before the effective date of this Act shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of this Act.

(2) A rule of the department shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department adopted after the effective date of this Act shall not apply to a feedlot, dairy farm or egg production house holding any department of public health permit and having an established date of operation prior to the effective date of the rule.

(4) A rule of the department adopted after the effective date of this Act shall not apply to a feedlot, dairy farm or egg production house not previously required to hold a department of public health permit and having an established date of operation prior to the effective date of the rule.

(c) The applicability of rules promulgated under the "Tennessee Air Quality Act", Tennessee Code Annotated, Title 53, Chapter 34, shall be as follows:

(1) A rule of the Department of Public Health or the Air Pollution Control Board in effect on the effective date of this Act shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of this Act.

(2) A rule of the Department of Public Health or the Air Pollution Control Board shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the Department of Public Health or the Air Pollution Control Board pertaining to a feedlot, dairy farm or egg production house adopted after the effective date of this Act shall not apply to any feedlot, dairy farm or egg production house having an established date of operation prior to the effective date of the rule.

SECTION 4.

(a) The applicability of zoning requirements shall be as follows:

(1) A zoning requirement shall apply to a feedlot, dairy farm or egg production house with an established date of operation subsequent to the effective date of the zoning requirements.

(2) A zoning requirement shall not apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of the zoning requirement.

(3) A zoning requirement which is in effect on the effective date of this Act shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of this Act.

(4) A zoning requirement adopted by a city shall not apply to a feedlot, dairy farm or egg production house which becomes located within an incorporated or unincorporated area subject to regulation by that city by virtue of an incorporation or annexation which takes effect after the effective date of this Act.

(b) A person shall comply with this section as a matter of law where no zoning requirement exists.

(c) The applicability of regulations shall be as follows:

(1) A regulation shall apply to a feedlot, dairy farm or egg production house with an established

date of operation subsequent to the effective date of such regulation.

(2) A regulation shall not apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of the regulation.

(3) A regulation which is in effect on the effective date of this Act shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of this Act.

(4) A regulation adopted by a city shall not apply to a feedlot, dairy farm or egg production house which becomes located within an incorporated or unincorporated area subject to regulation by such city by virtue of an incorporation or annexation which takes effect after the effective date of this Act.

(d) A person shall comply with this section as a matter of law where no regulation exists.

SECTION 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and to that end, the provisions of this Act are declared to be severable.

SECTION 6. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 29, 1979

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

date of operation subsequent to the effective date of such regulation.

(2) A regulation shall not apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of the regulation.

(3) A regulation which is in effect on the effective date of this Act shall apply to a feedlot, dairy farm or egg production house with an established date of operation prior to the effective date of this Act.

(4) A regulation adopted by a city shall not apply to a feedlot, dairy farm or egg production house which becomes located within an incorporated or unincorporated area subject to regulation by such city by virtue of an incorporation or annexation which takes effect after the effective date of this Act.

(d) A person shall comply with this section as a matter of law where no regulation exists.

SECTION 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application and to that end, the provisions of this Act are declared to be severable.

SECTION 6: This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 29, 1979

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: April 12, 1979

Lamar Alexander,
GOVERNOR

CHAPTER NO. 139
HOUSE BILL NO. 723

By Whitson

Substituted for: Senate Bill No. 880

By Garland

AN ACT relative to coon dogs and to amend Tennessee Code Annotated,
Section 51-441.

BE IT ENACTED BY THE GENERAL
ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 51-441, is amended by deleting the sixth paragraph of the section in its entirety and by substituting instead the following:

It shall be unlawful for any person or firm to train coon dogs by chasing coons in Unicoi County except during the seventy (70) days immediately prior to the season for hunting coons in such county.

SECTION 2. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 2, 1979

Texas

RIGHT-TO-FARM ACT

CHAPTER 124

S. B. No. 488

An Act to insure the right to farm by providing limitations on nuisance actions, rules, regulations, and zoning requirements concerning certain agricultural operations; adding Chapter 9A to Title 4, Revised Civil Statutes of Texas, 1925, as amended.

Be it enacted by the Legislature of the State of Texas:

Section 1. Title 4, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Chapter 9A to read as follows:

CHAPTER NINE A

PROTECTION OF AGRICULTURAL OPERATIONS

Art. 165b-1. Preexisting agricultural operations

Section 1. Short title: This Act may be cited as the 'Right-to-Farm Act.'

61. Vernon's Ann.Civ.St. art. 165b-1.

10/1/51

"Sec. 2. It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this Act to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or deemed to be a nuisance . . .

"Sec. 3. The following words and phrases as used in this Act shall have the meanings given them in this section:

"(1) 'Agricultural operation' includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, planting seed, and for the production of fibers, floriculture, viticulture, and horticulture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

"(2) 'Established date of operation' means the date on which the agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent 'established date of operation' established as of the date of commencement of the expanded operation, and the commencement of expanded operation shall not divest the agricultural operation of a previously established date of operation.

"(3) 'Governmental requirement' includes any rules, regulations, ordinances, zoning, or other requirements and restrictions enacted or promulgated by cities, counties, or other municipal corporations who presently have or may in the future be granted the power to enact or promulgate such.

"(4) 'Effective date of the requirement' means the date on which the government requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation.

"(5) The recodification of a municipal ordinance shall not change the original effective date to the extent of the original standards and requirements.

"Sec. 4. (a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation; provided, however, that nothing herein shall in any way restrict or impede the authority of this state to protect the public health, safety, and welfare or the authority of a municipality to enforce state law.

"(b) Any person who brings a nuisance action for damages or injunctive relief against an agricultural operation which has existed for one year or more prior to the date that such action is instituted and any person, firm or corporation who violates the provisions of Subsection (a) of Section 4 of this Act shall be liable to the agricultural operator for all costs and expenses incurred in defense of such action, including but not limited to attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense of such litigation.

"(c) The provisions of this section shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in

violation of any federal, state, or local statute or governmental regulation which applies to that agricultural operation or portion thereof.

"Sec. 5. From and after the effective date of this Act, the applicability of governmental requirements shall be as follows:

"(a) A governmental requirement of a political subdivision of the state other than a city:

"(i) shall apply to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;

"(ii) shall not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement;

"(iii) shall apply to an agricultural operation if the governmental requirement was in effect and was applicable to such operation prior to the effective date of this Act.

"(b) A governmental requirement of a city shall not apply to any agricultural operation situated outside the corporate boundaries of such city on the effective date of this Act. If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of such city shall not apply unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, discharge of firearms, or traffic hazards. This section shall be construed to maintain to the limited degree set forth herein the previous authority over nonconforming uses, but not to expand such previous authority."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 16, 1981: Yeas 30, Nays 0; passed the

House on May 4, 1981: Yeas 137, Nays 2, two present not voting.

Approved May 13, 1981.

Effective May 13, 1981.

LEGISLATIVE GENERAL COUNSEL

Approved RM

Date 11/20/80

(INDUSTRIAL AND AGRICULTURAL ACTIVITIES - NUISANCES)

1981

GENERAL SESSION

H. B. No. 6 By Ray S. Schmutz

Evan L. Olsen

Glen E. Brown

AN ACT RELATING TO INDUSTRIAL AND AGRICULTURAL ACTIVITIES;
PROVIDING THAT SUCH ACTIVITIES SHALL NOT BE DECLARED
NUISANCES BY VIRTUE OF CHANGED CONDITIONS IF THEY HAVE
BEEN IN OPERATION FOR MORE THAN THREE YEARS.

Be it enacted by the Legislature of the State of Utah:

Section 1. (1) No agricultural, manufacturing, or other
industrial plant, or establishment, or any agricultural
operation, any of its appurtenances or the operation thereof
shall be or become a nuisance, private or public, by virtue of
any changed conditions in and about the locality thereof after
the same has been in operation for more than three years when
such plant, facility, establishment, or operation, its
appurtenances or the operation thereof was not a nuisance at
the time the operation thereof began; provided, that the
provisions of this subsection shall not apply whenever a
nuisance results from the negligent or improper operation of
any such plant, establishment, or operation, or any of its
appurtenances.

(2) The provisions of subsection (1) of this section
shall not affect or defeat the right of any person to recover
damages for any injuries or damage sustained on account of any
pollution of, or change in the condition of, the waters of any
stream or on account of any overflow of the lands of any
person.

1 H. B. No. 6

2 (3) Any and all ordinances now or hereafter adopted by
3 any county or municipal corporation in which such plant,
4 establishment, or operation is located, which makes the
5 operation thereof or its appurtenances a nuisance or providing
6 for an abatement thereof as a nuisance in the circumstances set
7 forth in this section are null and void; provided, however,
8 that the provisions of this subsection shall not apply whenever
9 a nuisance results from the negligent or improper operation of
10 any such plant, establishment, or operation.

-2-

MANAGEMENT AND FISCAL ANALYSIS

H.B. 6

None required.

OFFICE OF THE LEGISLATIVE FISCAL ANALYST

H. B. 6 INDUSTRIAL AND AGRICULTURAL ACTIVITIES - NUISANCES

This bill was recommended by the Agriculture Study Committee
as a result of its study during the 1980 interim.

OFFICE OF LEGISLATIVE RESEARCH

Vermont
Copy

AS PASSED BY
HOUSE AND SENATE

Vermont

H.345

1

2

Introduced by Committee on Agriculture

3

Subject: Agriculture; nuisance suits; right to farm

4

Sponsor's statement of purpose: It is the purpose of this bill to

5

protect reasonable agricultural activities conducted on farmland from

6

nuisance lawsuits.

7

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Own Vote		Legislative Vote							
Yes	No	Date	Senate	House	Yes	No	Date	Comments	
		1st Reading							
		Committee Report							
		2nd Reading							
		3rd Reading							
		Amended - Calendar							
		Amended - Journal							
		Amended - Journal							
		Committed							
		Recommitted							
		Ordered to lie							
		Called up							
		Passed							
		Messaged							
		Com. of Conference							
		Withdrawn							
		Signed by Governor							

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16

AN ACT TO ADD 12 V.S.A. CHAPTER 95 RELATING TO NUISANCE SUITS AGAINST
AGRICULTURAL ACTIVITIES

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

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

2 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL ACTIVITIES

3 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

4 The legislature finds that agricultural production is a major con-
5 tributor to the state's economy; agricultural lands constitute unique
6 and irreplaceable resources of statewide importance; that the contin-
7 uation of agricultural activities preserves the landscape and en-
8 vironmental resources of the state, contributes to the increase of
9 tourism, and furthers the economic self-sufficiency of the people of
10 the state; and that the encouragement, development, improvement, and
11 preservation of agriculture will result in a general benefit to the
12 health and welfare of the people of the state. The legislature fur-
13 ther finds that agricultural activities conducted on farmland in ur-
14 banizing areas are potentially subject to lawsuits based on the
15 theory of nuisance, and that these suits encourage and even force the
16 premature removal of the lands from agricultural use. It is the pur-
17 pose of this act to protect reasonable agricultural activities cen-
18 ducted on farmland from nuisance lawsuits.

19 § 5752. DEFINITIONS

20 (a) "Agricultural activity" includes, but is not limited to, the
21 and silvacultural
22 growing, raising and production of horticultural/crops, grapes, ber-
23 ries, trees, fruit, poultry, livestock, grain, hay, and dairy
24 products.

25 (b) "Farmland" means land devoted primarily to commercial agri-
cultural activities.

1 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM NUISANCE LAWSUITS

2 (a) Agricultural activities conducted on farmland, if consistent
3 with good agricultural practices and established prior to surrounding
4 non-agricultural activities, shall be entitled to a rebuttable pre-
5 sumption that the activity is reasonable and does not constitute a
6 nuisance. If an agricultural activity is conducted in conformity
7 with federal, state, and local laws and regulations, it is presumed
8 to be good agricultural practice not adversely affecting the public
9 health and safety. The presumption may be rebutted by a showing that
10 the activity has a substantial adverse effect on the public health
11 and safety.

12 (b) Nothing in this section shall be construed to limit the
13 authority of state or local boards of health to abate nuisances af-
14 fecting the public health, as provided in 18 V.S.A. chapter 11.

15 ~~§ 5754. ASSESSMENT OF COSTS~~

16 In an action against an agricultural activity conducted on farmland
17 based on the theory of nuisance, the court may, upon request of the
18 prevailing party, award to the prevailing party costs as are equita-
19 ble, including reasonable attorney's fees. As against plaintiff,
20 costs/may be awarded when the court finds that the cause of action
21 was frivolous. As against defendant, costs/may be awarded when the
22 court finds that defendant failed to take any reasonable action to
23 abate a condition that could have been corrected.

24 Sec. 2. EFFECTIVE DATE

25 This act shall take effect from passage.

VPO
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VPO

HOUSE BILL NO. 1428

House Amendments in [] - February 7, 1993

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A BILL to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 4.5, consisting of sections numbered 3.1-22.28 and 3.1-22.29, establishing a Right to Farm Act.

Patrons—Councill, Jones, R. B., Slayton, O'Brien, J. W., Green, Dickinson, Lemmon, Campbell, Sanford, Bagley, F. C., Bell, Crouch, Beard, Guest, Parker, Solomon, Quillen, Brickley, Ashworth, and Anderson

Referred to the Committee on Agriculture

Be it enacted by the General Assembly of Virginia: ...
1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 4.5, consisting of §§ 3.1-22.28 and 3.1-22.29, as follows:

CHAPTER 4.5.

RIGHT TO FARM ACT.

§ 3.1-22.28. Legislative determination and declaration of policy.—It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this chapter to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

§ 3.1-22.29. When agricultural operations do not constitute nuisance by changed conditions in locality.—A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances [or when there has been a significant change in the operation itself] .

B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production for sale of crops, [or animals, and or] fowl, including but not limited to the production for sale of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and trees in such quantity and so spaced and maintained as to constitute a forest area.

C. The provisions of subsection A shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

D. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its

2 circumstance set forth in this section are and shall be null and void; however, the
3 provisions of this section shall not apply whenever a nuisance results from the negligent
4 or improper operation of any such agricultural operation or any of its appurtenances } or
5 when there has been a significant change in the operation itself } .

6 E. This section shall not be construed to invalidate any contracts heretofore made but
7 insofar as contracts are concerned, it is only applicable to contracts and agreements to be
8 made in the future.

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* Passed & signed into Law
effective July 1, 1981

Official Use By Clerks	
Passed By	Passed By The Senate
The House of Delegates	without amendment <input type="checkbox"/>
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with amendment <input type="checkbox"/>	substitute <input type="checkbox"/>
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substitute w/amdt <input type="checkbox"/>	
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

WASHINGTON

1 AN ACT relating to agriculture; adding new sections to chapter
2 7.48 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Section 1. The legislature finds that
5 agricultural activities conducted on farmland in urbanizing
6 areas are often subjected to nuisance lawsuits, and that such
7 suits encourage and even force the premature removal of the
8 lands from agricultural uses. It is therefore the purpose of
9 this act to provide that agricultural activities conducted on
10 farmland be protected from nuisance lawsuits.

11 NEW SECTION. Sec. 2. There is added to chapter 7.48 RCW
12 a new section to read as follows:

13 Notwithstanding any other provision of this chapter,
14 agricultural activities conducted on farmland, if consistent
15 with good agricultural practices and established prior to
16 surrounding nonagricultural activities, are presumed to be
17 reasonable and do not constitute a nuisance unless the activity
18 has a substantial adverse effect on the public health and
19 safety.

20 If that agricultural activity is undertaken in conformity
21 with federal, state, and local laws and regulations, it is
22 presumed to be good agricultural practice and not adversely
23 affecting the public health and safety.

24 NEW SECTION. Sec. 3. As used in section 2 of this act:

25 (1) "Agricultural activity" includes, but is not limited
26 to, the growing or raising of horticultural and viticultural
27 crops, berries, poultry, livestock, grain, silage, hay, and dairy
28 products.

29 (2) "Farmland" means land devoted primarily to the
30 production, for commercial purposes, of livestock or
1 agricultural commodities.

2 NEW SECTION. Sec. 4. If any provision of this act or
3 its application to any person or circumstance is held invalid,
4 the remainder of the act or the application of the provision to
5 other persons or circumstances is not affected.

Passed the Senate February 16, 1973.

John W. Eberberg
President of the Senate

Passed the House March 2, 1973.

John B. Bagg
Democratic Speaker of the House.

Republican Speaker of the house.

FILED
MAR 26 1973
4:34 PM

Approved March 21, 1973
[Signature]
Governor of the State of Washington

14 NEW SECTION. Sec. 29. The legislature finds that
15 agricultural land is essential to providing citizens with food
16 and fiber and to insuring aesthetic values through the
17 preservation of open spaces in our state. The legislature
18 further finds that government regulations can cause agricultural
19 land to be converted to nonagricultural uses. The legislature
20 intends that agricultural activity consistent with good
21 practices be protected from government over-regulation.

22 NEW SECTION. Sec. 30. There is added to chapter 70.94
23 RCW a new section to read as follows:

24 (1) Odors caused by agricultural activity consistent
25 with good agricultural practices on agricultural land are exempt
26 from the requirements of this chapter unless they have a
27 substantial adverse effect on public health. In determining
28 whether agricultural activity is consistent with good
29 agricultural practices, the department of ecology or board of
30 any authority shall consult with a recognized third-party expert
31 in the activity prior to issuing any notice of violation.

32 (2) Any notice of violation issued under this chapter
33 pertaining to odors caused by agricultural activity shall
34 include a statement as to why the activity is inconsistent with

1 good agricultural practices, or a statement that the odors have
2 substantial adverse effect on public health.

3 (3) In any appeal to the pollution control hearings
4 board or any judicial appeal, the agency issuing a final order
5 pertaining to odors caused by agricultural activity shall prove
6 the activity is inconsistent with good agricultural practices or
7 that the odors have a substantial adverse impact on public
8 health.

9 (4) If a person engaged in agricultural activity on a
10 contiguous piece of agricultural land sells or has sold a
11 portion of that land for residential purposes, the exemption of
12 this section shall not apply.

13 (5) As used in this section:

14 (a) "Agricultural activity" means the growing, raising,
15 or production of horticultural or viticultural crops, berries,
16 poultry, livestock, grain, mint, hay, and dairy products.

17 (b) "Good agricultural practices" means economically
18 feasible practices which are customary among or appropriate to
19 farms and ranches of a similar nature in the local area.

20 (c) "Agricultural land" means at least five acres of
21 land devoted primarily to the commercial production of livestock
22 or agricultural commodities.

1 2

23 NEW SECTION. Sec. 31. There is added to chapter 90.48
24 RCW a new section to read as follows:

25 (1) Prior to issuing a notice of violation related to
26 discharges from agricultural activity on agricultural land, the
27 department shall consider whether an enforcement action would
28 contribute to the conversion of agricultural land to
29 nonagricultural uses. Any enforcement action shall attempt to
30 minimize the possibility of such conversion.

31 (1) As used in this section:

32 (a) "Agricultural activity" means the growing, raising,
33 or production of horticultural or viticultural crops, berries,
34 poultry, livestock, grain, mint, hay and dairy products.

35 (b) "Agricultural land" means at least five acres of
1 land devoted primarily to the commercial production of livestock
2 or agricultural commodities.

3

BE IT ORDAINED by the Township of Pilesgrove, that ARTICLE VIII-GENERAL STANDARDS AND REQUIREMENTS of the Pilesgrove Township Zoning Ordinance of 1978 is hereby amended to add the following section:

8.11 RIGHT TO FARM

The right to farm all land is hereby recognized to exist as a natural right and is also hereby ordained to exist as a permitted use everywhere in the Township of Pilesgrove, regardless of zoning designation and regardless of specified uses and prohibited uses set forth elsewhere in this ordinance, subject only to the restrictions and regulations for intensive fowl or livestock farms and subject to Township Health and Sanitary codes. The Right to Farm as it is used in this section includes the use of large irrigation pumps and equipment, aerial and ground seeding and spraying, large tractors, numerous farm laborers and the application of chemical fertilizers, insecticides and herbicides; all for the purpose of producing from the land agricultural products such as vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers and seeds. [This Right to Farm shall also include the right to use land for grazing by animals, subject to the restrictions for intensive fowl or livestock farms. [The foregoing uses and activities included in the Right to Farm, when reasonable and necessary for the particular farming, livestock or fowl production and when conducted in accordance with generally accepted agricultural practices, may occur on holidays, Sundays and weekdays, at night and in the day, and the noise, odors, dust and fumes that are caused by them are also specifically permitted as part of the exercise of this right. It is expressly found that whatever nuisance may be caused to others by such uses and activities so conducted, is more than offset by the benefits from farming to the neighborhood and community, and to society in general, by the preservation of open space, the beauty of the countryside and clean air and by the preservation and continuation of farming operations in Pilesgrove Township and in New Jersey as a source of agricultural products for this and future generations.

ALL ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect upon the filing thereof with
the County Planning Board after final passage, adoption and publication
in the manner prescribed by law.

Received 1st Reading Mar. 11, 1980

Passed 4-8-80

*From
Brett
to Chair Res*

3-21-86

SENATE BILL 409 "RIGHT TO FARM"

36 STATES HAVE A FORM OF "RIGHT TO FARM" LEGISLATION. 6

STATES HAVE LEGISLATION PENDING. NEW YORK PIONEERED THIS AREA

IN 1971 WITH ITS AGRICULTURAL DISTRICT LAW.

CONNECTICUT'S "RIGHT TO FARM" BILL HAS BEEN UPHELD BY THE

COURTS. WASHINGTON STATE HAS AN EXTREMELY STRONG "RIGHT TO

FARM" STATUTE-IT CREATES A "CONCLUSIVE PRESUMPTION" THAT

FARMING IS NOT A NUISANCE.

THE ALASKA MUNICIPAL LEAGUE'S POLICY STATEMENTS ARE SUPPORTIVE

OF THE IDEA BEHIND "RIGHT TO FARM" LEGISLATION, ACCORDING TO

MR. DAVID HEDBURG, PLANNING DIRECTOR OF THE FAIRBANKS NORTH

STAR BOROUGH.

SB-409 WILL NOT INTERFERE WITH MUNICIPALITIES' ZONING POWERS
OR THE POWER OF EMINENT DOMAIN.

SB-409 DOES NOT AFFECT THE ALASKA CODES OF CIVIL OR CRIMINAL
PROCEDURE. PEOPLE CAN STILL SUE CIVILLY UNDER AS 9.45.230 TO
ENJOIN ACTIVITY THEY CONSIDER NEGLIGENT OR IMPROPER. SB-409
WILL CREATE A PRESUMPTION OF NON-LIABILITY IF THE FARM IS
BEING RUN PROPERLY. SINCE SB-409 ONLY DEALS WITH PRIVATE
NUISANCES .. IT DOES NOT TOUCH PUBLIC NUISANCES-WHICH ARE
CRIMES. PUBLIC NUISANCES SUCH AS WATER POLLUTION WILL
CONTINUE TO BE PROSECUTED UNDER TITLE 46 OF THE ALASKA
STATUTES, AND D.E.C.'S AUTHORITY IS NOT TOUCHED BY SB-409.

SB-409 HELPS FARMERS AVOID HARASSMENT LAWSUITS BROUGHT BY
THOSE WHO MOVE IN AFTER THE FARM WAS ALREADY THERE FOR AT
LEAST 3 YEARS. THE FARM MUST NOT HAVE BEEN A NUISANCE AT THE
TIME IT BEGAN FOR SB-409 TO APPLY, AND IF THE FARM IS BEING
RUN IMPROPERLY OR NEGLIGENTLY SB-409 IS NO PROTECTION.

SB-409 IS SOMEWHAT FUTURISTIC IN ALASKA, BUT ACCORDING TO THE PLANNING DIRECTOR OF THE NORTH STAR BOROUGH THERE ARE PRIVATE NUISANCE LAWSUITS PENDING RIGHT NOW THAT ARE CREATING REAL PROBLEMS FOR FARMERS IN THE FAIRBANKS' AREA. IN THE REST OF THE COUNTRY THERE ARE THOUSANDS OF LAWSUITS FILED CONCERNING SITUATIONS JUST LIKE THE ONE SB-409 SEEKS TO AVOID-FARMLAND BEING ENCROACHED UPON BY SUBDIVISIONS - AND FARMLAND LOSING.

A FEBRUARY, 1986, STUDY OF THE MAT-SU BORO DONE BY THE UNIVERSITY OF ALASKA UNDER THE DIRECTION OF DR. JAMES DREW SAYS THAT 98% OF THOSE SURVEYED ARE OPPOSED TO DEVELOPMENT ON AGRICULTURAL LANDS. THE STUDY CONCLUDED THAT "IT IS EVIDENT THAT SUPPORT FOR RETENTION OF FARMLAND-ASSOCIATED AMENITIES IS WIDESPREAD IN THE BOROUGH" (P.32 OF THE STUDY). THE STUDY NOTED NOT ONLY THE FUNDAMENTAL VALUE OF FARMLAND IN PROVIDING ALASKANS FOOD, BUT ALSO RECOGNIZED THE MORE ESOTERIC HISTORIC AND TOURIST VALUE, ALONG WITH THE "UNIQUE BEAUTY" (P.3) PROVIDED BY ALASKAN FARMLAND.

IT IS SIMPLY UNFAIR THAT A FARMER WHO WAS THERE FIRST SHOULD
BE DRAGGED INTO COURT DURING THE MIDDLE OF A VERY SHORT
GROWING SEASON FOR RUNNING A TRACTOR AT MIDNIGHT. SB-409 WILL
HELP AVOID THIS SITUATION.

SB-409 IS ONE SMALL PROVISION THAT WILL HELP THE ALASKAN
FARMER REMAIN PRODUCTIVE-AND THAT HELPS US ALL.

I ENCOURAGE YOU TO VOTE IN FAVOR OF SB-409. THANK YOU.

(LIST OF SUPPORTERS ON FOLLOWING PAGE)

LIST OF SUPPORTERS FOR SB-409

ALASKA STATE SOIL AND WATER CONSERVATION BOARD

(JOHN PEOPLES OF THIS BOARD HAS BEEN INSTRUMENTAL IN HELPING
DRAFT THIS LEGISLATION)

MAYOR JUANITA HELMS OF THE NORTH STAR BOROUGH

MAYOR DOROTHY JONES OF THE MAT-SU BOUROUGH

MR. DAVID HEDBURG, PLANNING DIRECTOR OF THE NORTH STAR BOROUGH

(MR. HEDBURG HELPED DRAFT THE CALIFORNIA "RIGHT TO FARM" BILL.

HE HAS SAID THAT THERE IS BROAD SUPPORT FOR SB-409 IN THE

FAIRBANKS-NORTH STAR BOROUGH, AND THAT THE ALASKA MUNICIPAL

LEAGUE'S POLICY STATEMENTS ARE FAVORABLE TOWARD THE IDEA OF

"RIGHT TO FARM" LEGISLATION).

ALASKA FARMERS AND STOCKGROWERS ASSOCIATION

("RIGHT TO FARM" LEGISLATION IS PART OF THEIR 1986 RESOLUTION

PLATFORM)

ALASKA HORTICULTURE ASSOCIATION

(THEIR LETTER OF MARCH 6, 1986 STATES, "OUR ASSOCIATION
RECOGNIZES THE RAPID DEVELOPMENT OF ALASKAN FARM LANDS INTO
HOUSING AREAS AS A VERY REAL THREAT TO THE INDUSTRY. WE MUST
PROTECT WHAT FARMING AND HORTICULTURAL EFFORTS AND
OPPORTUNITIES WE HAVE TO ASSURE THE POTENTIAL FOR PRODUCTION
OF ALASKAN-GROWN FOOD AND PLANT MATERIALS.")

Original sponsor: Kerttula

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 409 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a right to farm."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that agricul-
9 ture makes an important contribution to the economy of the state and that
10 the encouragement, development, improvement, and preservation of agricul-
11 ture will result in a general benefit to the health and welfare of the
12 people of the state. The legislature further finds that conflict between
13 agricultural operations and urban and suburban land uses threatens the
14 permanent loss of agricultural land.

15 * Sec. 2. AS 09.45 is amended by adding a new section to read:

16 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

17 (a) An agricultural operation and an operation appurtenant to an
18 agricultural operation is not and does not become a private nuisance
19 by a changed condition that exists on neighboring land if the agricul-
20 tural operation has been in operation for more than three years and if
21 the agricultural operation was not a nuisance at the time the agricul-
22 tural operation began.

23 (b) The provisions of (a) of this section do not apply to a
24 nuisance resulting from improper or negligent conduct of agricultural
25 operations or operations appurtenant to an agricultural operation.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance or regulation to the contrary.
28
29

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 409
Title : Right to Farm

Sponsor : Senate Resources Committee
Requestor : Senate Resources Committee
Date of Request : 3/17/86

FISCAL DETAIL

Agency Affected : Natural Resources
BRU : Agricultural Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Carol Wilson
Division : Commissioner's Office

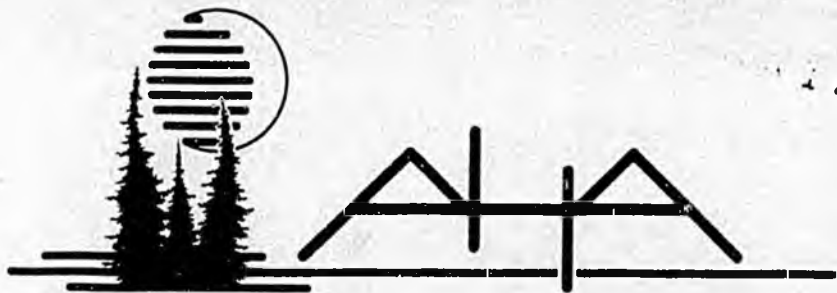
Phone : 465-2400
Date : 3/17/86

Approved by Commissioner : Wm. D. Arnold, Deputy
Agency : Natural Resources

Date : 3/17/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



2 1986

Alaska Horticultural Association

March 5, 1986

Senator Sturgelewski
Pouch V
Juneau, AK 99801

RE: SENATE BILL 409

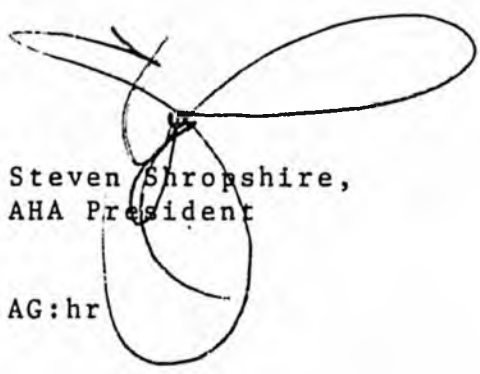
Dear Senator Sturgelewski:

We are writing to express our strong support for SB 409, the Alaska Right to Farm Act. The Alaska Horticultural Association enthusiastically welcomes the support for farming and horticulture expressed by this Bill and asks your support in assuring its passage through the Senate.

Our Association recognizes the rapid development of Alaskan farm lands into housing areas as a very real threat to the industry. We must protect what farming and horticultural efforts and opportunities we have to assure the potential for production of Alaskan-grown food and plant materials.

We must protect the economic and self-sufficiency advantages farming affords the State of Alaska. Our hard-working farmers and horticulturists deserve consideration and defense.

Very Sincerely Yours,



Steven Shropshire,
AHA President

AG:hr

Introduced: 2/13/86
Referred: Resources

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 409

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a right to farm."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

9 (1) agriculture makes an important contribution to the economy
10 of the state;

11 (2) agricultural land constitutes a unique and irreplaceable
12 resource of statewide significance;

13 (3) the continuation of farming preserves the landscape and the
14 environmental resources of the state;

15 (4) agricultural land contributes to tourism;

16 (5) agricultural land furthers the economic self-sufficiency of
17 the people of the state; and

18 (6) the encouragement, development, improvement, and preserva-
19 tion of agriculture will result in a general benefit to the health and
20 welfare of the people of the state.

21 (b) The legislature further finds that conflicts between agricultural
22 operations and the urban and suburban land uses threaten to force the
23 abandonment of agricultural operations and the conversion of agricultural
24 land to nonagricultural uses and the permanent loss of the agricultural
25 land to the economy and to the human and environments of the state.

26 * Sec. 2. AS 09.45 is amended by adding a new section to read:

27 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

28 (a) An agricultural operation and an operation appurtenant to an
29 agricultural operation is not and does not become a private nuisance

Dave Hoolberg
Dnr Planning
Guthrie
Winnipeg 1-
Home rule 501.

SB 409

1 by a changed condition that exists on neighboring land if the agricul-
2 tural operation has been in operation for more than one year and if
3 the agricultural operation was not a nuisance at the time the agricul-
4 tural operation began.

5 (b) The provisions of (a) of this section do not apply to a
6 nuisance resulting from improper or negligent conduct of agricultural
7 operations or operations appurtenant to an agricultural operation.

8 (c) The provisions of (a) of this section prevail over a municipal
9 ordinance or regulation to the contrary.

*Article 29?
Amendment*

MESSAGE TO THE SENATE

HOUSE

May 7, 1986

MR. PRESIDENT:

The House has passed CSSB 409(Res) (right to farm) with the following amendment:

HCS CSSB 409(Jud) amH (same title)

and ~~it is transmitted~~ for consideration.

returned

CONCOR-?

Concur
16 0

Isaac Castrom

CHIEF CLERK OF THE HOUSE

Offered: 4/30/86
Referred: Rules

Original sponsor: Kerttula

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 409 (Judiciary) am H
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12 people of the state. The legislature further finds that conflict between
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18 nuisance by a changed condition that exists on neighboring land if the
19 agricultural operation has been in operation for more than three years
20 and if the agricultural operation was not a nuisance at the time the
21 agricultural operation began.

22 (b) The provisions of (a) of this section do not apply to

23 (1) liability resulting from improper or negligent conduct
24 of agricultural operations; or

25 (2) flooding caused by the agricultural operation.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance, resolution, or regulation to the contrary.

28 (d) In this section, "agricultural operation" means

29 (1) any agricultural and farming activity such as

1
2
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Handwritten signature

- (A) the cultivation, conserving, and tillage of the soil;
- (B) dairying;
- (C) the operation of greenhouses;
- (D) the production, cultivation growing, and harvesting of an agricultural, floricultural, or horticultural commodity;
- (E) the raising of livestock, bees, fur-bearing animals, or poultry;
- (F) forestry or timber harvesting operations;

(2) any practice conducted on the agricultural operation as an incident to or in conjunction with activities described in (1) of this subsection.

Offered: 3/17/86
Referred: Rules

Original sponsor: Kerttula

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 409 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
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22 tural operation began.

23 (b) The provisions of (a) of this section do not apply to a
24 nuisance resulting from improper or negligent conduct of agricultural
25 operations or operations appurtenant to an agricultural operation.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance or regulation to the contrary.

HCS FOR CS FOR SB-409

REQUESTED CONCURRENCE WITH THE HCS (JUDICIARY) FOR CS
(RESOURCES) FOR SB-409, AS AMENDEND ON THE HOUSE FLOOR ON
5-6-86.

NO HARMFUL CHANGES IN THE BILL.

IN SENATE WE CUT DOWN THE LEGISLATIVE FINDINGS TO INCLUDE
THE MOST IMPORTANT STATEMENT-THAT AGRICULTURE MAKES A
CONTRIBUTION AND THAT THE STATE HAS AN INTEREST IN
PROTECTING AGRICULTURAL LAND.

IN SENATE WE RAISED THE NUMBER OF YEARS AN AGRICULTURAL
OPERATION HAD TO BE IN EXISTANCE BEFORE IT COULD GET THE
BENEFIT OF THE BILL FROM ONE YEAR TO THREE YEARS.

BILL WENT TO HOUSE.

HOUSE CHANGES INCLUDE:

1. ADDING MUNICIPAL RESOLUTIONS TO THE LIST OF MUNICIPAL ACTIONS THIS BILL WOULD SUPERCEDE (REMEMBER-THE BILL DOES NOT AFFECT ZONING OR EMINENT DOMAIN. THE BILL WOULD ONLY SUPERCEDE MUNICIPAL ACTIONS THAT ATTEMPTED TO MAKE AGRICULTURAL OPERATIONS PRIVATE NUISANCES EVEN IF THEY WERE ACTING PROPERLY.). THIS CHANGE CAME IN HOUSE C&RA.
2. DEFINED "AGRICULTURAL OPERATION". THIS WAS PROBABLY A GOOD IDEA. MANY STATES DO THIS AND I TOOK THE STATE SOIL AND WATER CONSERVATION DISTRICT ASSOCIATION'S DEFINITION ALONG WITH THE BEST OUT OF THE OTHER STATE'S DEFINITIONS TO COME UP WITH OURS. IT WILL COVER ALL FARMING, DAIRYING, GREENHOUSES, BEES, POULTRY, FORESTRY, LIVESTOCK RAISING-AND THE PRACTICES THAT GO ALONG WITH THEM. BECAUSE WE DEFINED

THE AG OPERATION, WE TOOK OUT THE SECTIONS SAYING THAT "AN OPERATION APPURTENANT" TO AN AGRICULTURAL OPERATION IS COVERED BY THE BILL, SINCE IT WAS INCLUDED IN THE DEFINITION OF AG OPERATION. (CHANGE CAME IN HOUSE JUDICIARY).

3. MADE FLOODING FROM AN AGRICULTURAL OPERATION ONE OF THE THINGS NOT PROTECTED BY THE BILL. FLOODING HAS TRADITIONALLY BEEN STRICT LIABILITY, AND THERE WAS CONCERN THAT THE ORIGINAL BILL MIGHT CHANGE THIS. I AM CONFIDENT THAT IT WOULD NOT HAVE, HOWEVER THE CHANGE DOES NOT HARM THE BILL IN ANY WAY AND IT DOES CLARIFY THE SOMEWHAT UNIQUE SITUATION FLOODING HAS IN TORT LAW. THIS CHANGE CAME IN HOUSE JUDICIARY. ON THE HOUSE FLOOR REP. PEARCE AMENDED THIS CHANGE TO MAKE IT CLEAR THAT ONLY FLOODING FROM AN AGRICULTURE OPERATION COULD TAKE THE FARMER OUT OF THE BILL'S AMBIT. THIS WHOLE AREA IS COVERED IN A DIFFERENT

PART OF TORT LAW, SB-409 WAS NEVER INTENDED TO TOUCH IT, SO

THE CHANGE SIMPLY MAKES THAT CLEAR.

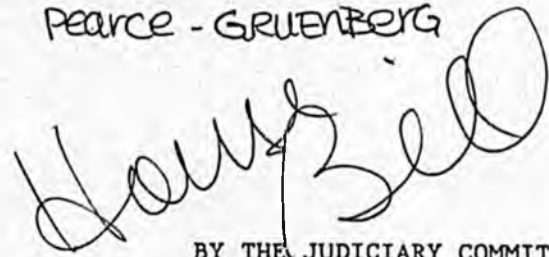
THE CHANGES ARE ALL ACCEPTABLE TO THE FARMING COMMUNITY,

THEY DO NOT CHANGE THE BILL, BUT ONLY CLARIFY.

Offered: 4/30/86
Referred: Rules

5/6: Amendment on FLOOR
Pearce - GRUENBERG

Original sponsor: Kerttula



1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 409 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

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A BILL

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17 (a) An agricultural operation is not and does not become a private
18 nuisance by a changed condition that exists on neighboring land if the
19 agricultural operation has been in operation for more than three years
20 and if the agricultural operation was not a nuisance at the time the
21 agricultural operation began.

22 (b) The provisions of (a) of this section do not apply to

23 (1) liability resulting from improper or negligent conduct
24 of agricultural operations; or

* 25

(2) flooding from the Agricultural operation

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance, resolution, or regulation to the contrary.

28 (d) In this section, "agricultural operation" means

29 (1) any agricultural and farming activity such as

- 1 (A) the cultivation, conserving, and tillage of the
2 soil;
3 (B) dairying;
4 (C) the operation of greenhouses;
5 (D) the production, cultivation growing, and harvest-
6 ing of an agricultural, floricultural, or horticultural com-
7 modity;
8 (E) the raising of livestock, bees, fur-bearing ani-
9 mals, or poultry;
10 (F) forestry or timber harvesting operations;
11 (2) any practice conducted on the agricultural operation as
12 an incident to or in conjunction with activities described in (1) of
13 this subsection.

Offered: 4/30/86
Referred: Rules

Original sponsor: Kerttula

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
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6 For an Act entitled: "An Act relating to a right to farm."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that agricul-
9 ture makes an important contribution to the economy of the state and that
10 the encouragement, development, improvement, and preservation of agricul-
11 ture will result in a general benefit to the health and welfare of the
12 people of the state. The legislature further finds that conflict between
13 agricultural operations and urban and suburban land uses threatens the
14 permanent loss of agricultural land.

15 * Sec. 2. AS 09.45 is amended by adding a new section to read:

16 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

17 (a) An agricultural operation is not and does not become a private
18 nuisance by a changed condition that exists on neighboring land if the
19 agricultural operation has been in operation for more than three years
20 and if the agricultural operation was not a nuisance at the time the
21 agricultural operation began.

22 (b) The provisions of (a) of this section do not apply to

23 (1) liability resulting from improper or negligent conduct
24 of agricultural operations; or

25 (2) flooding.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance, resolution, or regulation to the contrary.

28 (d) In this section, "agricultural operation" means

29 (1) any agricultural and farming activity such as

- 1 (A) the cultivation, conserving, and tillage of the
2 soil;
- 3 (B) dairying;
- 4 (C) the operation of greenhouses;
- 5 (D) the production, cultivation growing, and harvest-
6 ing of an agricultural, floricultural, or horticultural com-
7 modity;
- 8 (E) the raising of livestock, bees, fur-bearing ani-
9 mals, or poultry;
- 10 (F) forestry or timber harvesting operations;
- 11 (2) any practice conducted on the agricultural operation as
12 an incident to or in conjunction with activities described in (1) of
13 this subsection.

Offered: 4/4/86
Referred: Resources and
Judiciary

Original sponsor: Kerttula

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2

HOUSE CS FOR CS FOR SENATE BILL NO. 409 (C&RA)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a right to farm."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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13 agricultural operations and urban and suburban land uses threatens the
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16 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

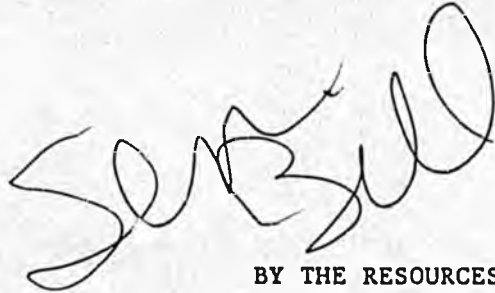
17 (a) An agricultural operation and an operation appurtenant to an
18 agricultural operation is not and does not become a private nuisance
19 by a changed condition that exists on neighboring land if the agricul-
20 tural operation has been in operation for more than three years and if
21 the agricultural operation was not a nuisance at the time the agricul-
22 tural operation began.

23 (b) The provisions of (a) of this section do not apply to a
24 nuisance resulting from improper or negligent conduct of agricultural
25 operations or operations appurtenant to an agricultural operation.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance, resolution, or regulation to the contrary.

Offered: 3/17/86
Referred: Rules

Original sponsor: Kerttula



1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

CS FOR SENATE BILL NO. 409 (Resources)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a right to farm."

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21 the agricultural operation was not a nuisance at the time the agricul-
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23 (b) The provisions of (a) of this section do not apply to a
24 nuisance resulting from improper or negligent conduct of agricultural
25 operations or operations appurtenant to an agricultural operation.

26 (c) The provisions of (a) of this section supersede a municipal
27 ordinance or regulation to the contrary.

Introduced: 2/13/86
Referred: Resources

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 409

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a right to farm."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

9 (1) agriculture makes an important contribution to the economy
10 of the state;

11 (2) agricultural land constitutes a unique and irreplaceable
12 resource of statewide significance;

13 (3) the continuation of farming preserves the landscape and the
14 environmental resources of the state;

15 (4) agricultural land contributes to tourism;

16 (5) agricultural land furthers the economic self-sufficiency of
17 the people of the state; and

18 (6) the encouragement, development, improvement, and preserva-
19 tion of agriculture will result in a general benefit to the health and
20 welfare of the people of the state.

21 (b) The legislature further finds that conflicts between agricultural
22 operations and the urban and suburban land uses threaten to force the
23 abandonment of agricultural operations and the conversion of agricultural
24 land to nonagricultural uses and the permanent loss of the agricultural
25 land to the economy and to the human and environments of the state.

26 * Sec. 2. AS 09.45 is amended by adding a new section to read:

27 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

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29 agricultural operation is not and does not become a private nuisance

1 by a changed condition that exists on neighboring land if the agricul-
2 tural operation has been in operation for more than one year and if
3 the agricultural operation was not a nuisance at the time the agricul-
4 tural operation began.

5 (b) The provisions of (a) of this section do not apply to a
6 nuisance resulting from improper or negligent conduct of agricultural
7 operations or operations appurtenant to an agricultural operation.

8 (c) The provisions of (a) of this section prevail over a municipi-
9 pal ordinance or regulation to the contrary.

Introduced: 2/13/86
Referred: Resources

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 409

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to a right to farm."

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(PUT IN
TITLE 29)