

Chapter 642

(House Bill 1153)

AN ACT concerning

Commercial Fishing and Seafood Operations – Nuisance Actions – Exemption

FOR the purpose of expanding the application of certain provisions of law relating to the protection of agricultural operations from nuisance actions under certain circumstances to apply to certain commercial fishing and seafood operations; exempting certain commercial fishing and seafood operations from nuisance lawsuits; authorizing an appeal of a certain decision on a nuisance complaint against a commercial fishing or seafood operation to a circuit court in a certain manner; defining a certain term; altering the definition of a certain term; and generally relating to nuisance actions against commercial fishing or seafood operations.

BY repealing and reenacting, with amendments,
 Article – Courts and Judicial Proceedings
 Section 5–403
 Annotated Code of Maryland
 (2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 20–301
 Annotated Code of Maryland
 (2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–403.

(a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

[(1)] (2) [In this section, “agricultural] “**AGRICULTURAL** operation” means an operation for the processing of agricultural crops or on–farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer.

(3) (I) “COMMERCIAL FISHING OR SEAFOOD OPERATION” MEANS AN OPERATION FOR THE HARVESTING, STORAGE, PROCESSING, MARKETING, SALE, PURCHASE, TRADE, OR TRANSPORT OF ANY SEAFOOD PRODUCT.

(II) “COMMERCIAL FISHING OR SEAFOOD OPERATION” INCLUDES THE DELIVERY, STORAGE, AND MAINTENANCE OF EQUIPMENT AND SUPPLIES AND CHARTER BOAT FISHING AND RELATED ARRIVAL AND DEPARTURE ACTIVITIES, EQUIPMENT, AND SUPPLIES.

[(2)] (4) Notwithstanding § 5–101 of the Natural Resources Article, “silvicultural operation” means implementation of forestry practices, including the establishment, composition, growth, and harvesting of trees.

(b) (1) This section does not:

(i) Prohibit a federal, State, or local government from enforcing health, environmental, zoning, or any other applicable law;

(ii) Relieve any agricultural [or], silvicultural, **OR COMMERCIAL FISHING OR SEAFOOD** operation from the responsibility of complying with the terms of any applicable federal, State, and local permit required for the operation;

(iii) Relieve any agricultural [or], silvicultural, **OR COMMERCIAL FISHING OR SEAFOOD** operator from the responsibility to comply with any federal, State, or local health, environmental, and zoning requirement; or

(iv) Relieve any agricultural [or], silvicultural, **OR COMMERCIAL FISHING OR SEAFOOD** operation from liability for conducting an agricultural **OR A COMMERCIAL FISHING OR SEAFOOD** operation in a negligent manner.

(2) This section does not apply to [any]:

(I) ANY agricultural operation that is operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law; **OR**

(II) ANY COMMERCIAL FISHING OR SEAFOOD OPERATION THAT IS NOT IN COMPLIANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.

(c) If an agricultural [operation or], A silvicultural, **OR A COMMERCIAL FISHING OR SEAFOOD** operation has been under way for a period of 1 year or more and if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and is not conducted in a negligent manner:

(1) The operation, including any sight, noise, odors, dust, or insects resulting from the operation, may not be deemed to be a public or private nuisance; and

(2) A private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property, whether public or private.

(d) (1) This section does not create, and may not be construed as creating, a new cause of action or substantive legal right against a person who is engaged in an agricultural [or], A silvicultural, **OR A COMMERCIAL FISHING OR SEAFOOD** operation.

(2) This section does not affect, and may not be construed as affecting, any defenses available at common law to a defendant who is engaged in an agricultural [or], A silvicultural, **OR A COMMERCIAL FISHING OR SEAFOOD** operation and subject to an action for nuisance.

(e) (1) This subsection does not apply to an action brought by a government agency.

(2) If a local agency is authorized to hear a nuisance complaint against an agricultural **OR A COMMERCIAL FISHING OR SEAFOOD** operation, a person may not bring a nuisance action against an agricultural **OR A COMMERCIAL FISHING OR SEAFOOD** operation in any court until:

(i) The person has filed a complaint with the local agency; and

(ii) The local agency has made a decision or recommendation on the complaint.

(3) A DECISION OF A LOCAL AGENCY ON A NUISANCE COMPLAINT AGAINST A COMMERCIAL FISHING OR SEAFOOD OPERATION MAY BE APPEALED TO A CIRCUIT COURT IN ACCORDANCE WITH TITLE 7, CHAPTER 200 OF THE MARYLAND RULES.

[(3)] (4) If there is no local agency authorized to hear a nuisance complaint against an agricultural operation, a person may not bring a nuisance action against an agricultural operation in any court until:

(i) The person has referred a complaint to the State Agricultural Mediation Program in the Department of Agriculture under Title 1, Subtitle 1A of the Agriculture Article; and

(ii) The Department certifies that mediation has been concluded.

Article – Health – General

20–301.

(a) In this subtitle, “nuisance” means a condition that is dangerous to health or safety including:

- (1) An inadequately protected swimming pool;
- (2) An unprotected open ditch;
- (3) An unsanitary outhouse;
- (4) A foul pigpen;
- (5) An improperly functioning sewage system;
- (6) An unkempt junkyard;
- (7) An unkempt scrap metal processing facility;
- (8) An excessive accumulation of trash or garbage;
- (9) A dead animal;
- (10) A contaminated water supply;
- (11) An inadequately protected water supply;
- (12) A rodent harborage;
- (13) Poor housekeeping that could endanger the health of the owner, occupant, employee, or a neighbor; or
- (14) Any condition that may endanger health that may be transmitted by means including:
 - (i) Running streams;

- (ii) Surface drainage;
- (iii) Air currents;
- (iv) Birds;
- (v) Domestic animals; or
- (vi) Human beings.

(b) "Nuisance" does not include [any]:

(1) ANY condition resulting from a farm operation following generally accepted agricultural practices that are not creating a condition dangerous to health or safety; OR

(2) ANY CONDITION RESULTING FROM A COMMERCIAL FISHING OR SEAFOOD OPERATION FOLLOWING GENERALLY ACCEPTED INDUSTRY STANDARDS AND PROCESSES THAT ARE NOT CREATING A CONDITION DANGEROUS TO HEALTH OR SAFETY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.

Approved by the Governor, May 15, 2014.