

SENATE BILL 404

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D3

1998 Regular Session
(8r1968)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by ~~Senator Baker~~ **Senators Baker, Colburn, and Haines**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Agricultural Operations - Nuisance Suits - Protection Against**

3 FOR the purpose of revising provisions of the law relating to the protection of certain
4 agricultural activities from certain private actions under certain circumstances;
5 altering a certain definition; providing for the application and construction of
6 this Act; ~~providing for the award of certain damages and costs to a defendant~~
7 ~~under certain circumstances~~; and generally relating to the protection of farm
8 operations from certain civil actions.

9 BY repealing and reenacting, with amendments,
10 Article - Courts and Judicial Proceedings
11 Section 5-403
12 Annotated Code of Maryland
13 (1995 Replacement Volume and 1997 Supplement)

1

Preamble

2 WHEREAS, ~~Maryland farmers play an important role in this State's economy~~
3 ~~since agriculture, along with agriculture dependent businesses, generate more than~~
4 ~~\$11,000,000,000 in revenue and employ 14 percent of the Maryland workforce, or~~
5 ~~350,000 jobs; and~~

6 WHEREAS, ~~Maryland farmers also play a pivotal role in protecting and~~
7 ~~preserving our land and water resources with 14,000 farms on about 2.5 million acres;~~
8 ~~and~~

9 WHEREAS, ~~The State and many local governments have adopted programs to~~
10 ~~protect farmland and forests from development, the State has adopted a nationally~~
11 ~~acclaimed agricultural land preservation program, Program Open Space, Smart~~
12 ~~Growth, and Rural Legacy programs; and~~

13 WHEREAS, ~~Conditions that are an inherent part of normal agricultural and~~
14 ~~silvicultural production practices may generate nuisance complaints from residential~~
15 ~~properties in the vicinity of the agricultural and silvicultural operations; and~~

16 WHEREAS, ~~Nuisance complaints and the threat of nuisance suits tend to~~
17 ~~disrupt and discourage normal farm operations that are important to the State's~~
18 ~~economy and the preservation of farmland; and~~

19 WHEREAS, ~~The General Assembly finds that normal farm operations that are~~
20 ~~operated consistent with federal, State or local health, environmental or zoning~~
21 ~~requirements should receive increased protection against nuisance suits; now,~~
22 ~~therefore;~~

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

25

Article - Courts and Judicial Proceedings

26 5-403.

27 (a) In this section, ["operation"] "AGRICULTURAL OPERATION" means [a farm
28 operation for the:

- 29 (1) Cultivation of land;
- 30 (2) Production of agricultural crops;
- 31 (3) Raising of poultry;
- 32 (4) Production of eggs;
- 33 (5) Production of milk;
- 34 (6) Production of fruit or other horticultural crops;

1 (7) Production of livestock, including pasturage; and

2 (8) Production of bees and their products.] AN OPERATION FOR THE
 3 PROCESSING OF AGRICULTURAL CROPS OR ON-FARM PRODUCTION, HARVESTING,
 4 PROCESSING, OR MARKETING OF ANY AGRICULTURAL, HORTICULTURAL,
 5 SILVICULTURAL, AQUACULTURAL, OR APICULTURAL PRODUCT THAT HAS BEEN
 6 GROWN, RAISED, OR CULTIVATED BY THE FARMER.

7 (b) (I) This section does not [apply to]:

8 [(1) An agricultural operation that does not conform to federal, State, or
 9 local health or zoning requirements;

10 (2) A federal, State, or local agency when enforcing air, water quality, or
 11 other environmental standards under federal, State, or local law; or

12 (3) An agricultural operation that is conducted in a negligent manner.]

13 ~~(1)~~ (I) PROHIBIT A FEDERAL, STATE, OR LOCAL GOVERNMENT FROM
 14 ENFORCING HEALTH, ENVIRONMENTAL, ZONING, OR ANY OTHER APPLICABLE LAW;

15 ~~(2)~~ (II) RELIEVE ANY AGRICULTURAL ~~OPERATOR OPERATION~~ FROM
 16 THE RESPONSIBILITY OF COMPLYING WITH THE TERMS OF ANY APPLICABLE
 17 FEDERAL, STATE, AND LOCAL PERMIT REQUIRED FOR THE OPERATION;

18 ~~(3)~~ (III) RELIEVE ANY AGRICULTURAL OPERATOR FROM THE
 19 RESPONSIBILITY ~~OF COMPLYING TO COMPLY~~ WITH ANY FEDERAL, STATE, OR LOCAL
 20 HEALTH, ENVIRONMENTAL, AND ZONING REQUIREMENT~~s~~; OR

21 ~~(4)~~ (IV) RELIEVE ANY AGRICULTURAL ~~OPERATOR OPERATION~~ FROM
 22 LIABILITY FOR CONDUCTING AN AGRICULTURAL OPERATION IN A NEGLIGENT
 23 MANNER.

24 (2) THIS SECTION DOES NOT APPLY TO ANY AGRICULTURAL OPERATION
 25 THAT IS OPERATING WITHOUT A FULLY AND DEMONSTRABLY IMPLEMENTED
 26 NUTRIENT MANAGEMENT PLAN FOR NITROGEN AND PHOSPHORUS IF OTHERWISE
 27 REQUIRED BY LAW.

28 (c) If an agricultural operation[, including any change in the operation,] has
 29 been under way for a period of 1 year or more and if the operation [or the change did
 30 not constitute a nuisance from the date the operation began or the date the change in
 31 the operation began:

32 (1) It may not be or become a public or private nuisance; and

33 (2) A private action may not be sustained on the grounds that the
 34 operation interferes or has interfered with the use or enjoyment of other property,
 35 whether public or private.] ~~CONFORMS TO~~ IS IN COMPLIANCE WITH APPLICABLE
 36 FEDERAL, STATE, AND LOCAL HEALTH, ENVIRONMENTAL, ZONING, AND PERMIT

1 REQUIREMENTS RELATING TO ANY NUISANCE CLAIM AND IS NOT CONDUCTED IN A
2 NEGLIGENT MANNER:

3 (1) THE OPERATION, INCLUDING ANY NOISE, ODORS, DUST, OR INSECTS
4 FROM THE OPERATION, MAY NOT BE DEEMED TO BE A PUBLIC OR PRIVATE
5 NUISANCE; AND

6 (2) A PRIVATE ACTION MAY NOT BE SUSTAINED ON THE GROUNDS THAT
7 THE OPERATION INTERFERES OR HAS INTERFERED WITH THE USE OR ENJOYMENT
8 OF OTHER PROPERTY, WHETHER PUBLIC OR PRIVATE.

9 (D) ~~A PLAINTIFF IS LIABLE TO THE DEFENDANT FOR DAMAGES THAT THE
10 COURT CONSIDERS APPROPRIATE, AND COSTS AND ATTORNEY'S FEES THAT THE
11 DEFENDANT INCURS, IN CONNECTION WITH A CIVIL ACTION THAT:~~

12 ~~(1) IS INITIATED AS A NUISANCE ACTION AGAINST A DEFENDANT;~~

13 ~~(2) IS INITIATED WITHOUT SUBSTANTIAL JUSTIFICATION OR IN BAD
14 FAITH; AND~~

15 ~~(3) DOES NOT RESULT IN A DETERMINATION, STIPULATION OF OR
16 ACCEPTANCE OF, LIABILITY OF THE DEFENDANT IN THE NUISANCE ACTION.~~

17 ~~(E)~~ (1) THIS SECTION DOES NOT CREATE, AND MAY NOT BE CONSTRUED AS
18 CREATING, A NEW CAUSE OF ACTION OR SUBSTANTIVE LEGAL RIGHT AGAINST A
19 PERSON WHO IS ENGAGED IN AN AGRICULTURAL OPERATION.

20 (2) THIS SECTION DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
21 AFFECTING, ANY DEFENSES AVAILABLE AT COMMON LAW TO A DEFENDANT WHO IS
22 ENGAGED IN AN AGRICULTURAL OPERATION AND SUBJECT TO AN ACTION FOR
23 NUISANCE.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
25 construed only prospectively and may not be applied or interpreted to have any effect
26 on or application to any case filed before the effective date of this Act.

27 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
28 effect October 1, 1998.