

SENATE BILL 404

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1998 Regular Session
8r1968

By: **Senator Baker**

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

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)

14 **Preamble**

15 WHEREAS, Maryland farmers play an important role in this State's economy
16 since agriculture, along with agriculture dependent businesses, generate more than
17 \$11,000,000,000 in revenue and employ 14 percent of the Maryland workforce, or
18 350,000 jobs; and

19 WHEREAS, Maryland farmers also play a pivotal role in protecting and
20 preserving our land and water resources with 14,000 farms on about 2.5 million acres;
21 and

22 WHEREAS, The State and many local governments have adopted programs to
23 protect farmland and forests from development, the State has adopted a nationally
24 acclaimed agricultural land preservation program, Program Open Space, Smart
25 Growth, and Rural Legacy programs; and

26 WHEREAS, Conditions that are an inherent part of normal agricultural and
27 silvicultural production practices may generate nuisance complaints from residential
28 properties in the vicinity of the agricultural and silvicultural operations; and

1 WHEREAS, Nuisance complaints and the threat of nuisance suits tend to
2 disrupt and discourage normal farm operations that are important to the State's
3 economy and the preservation of farmland; and

4 WHEREAS, The General Assembly finds that normal farm operations that are
5 operated consistent with federal, State or local health, environmental or zoning
6 requirements should receive increased protection against nuisance suits; now,
7 therefore,

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

10 **Article - Courts and Judicial Proceedings**

11 5-403.

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

- 14 (1) Cultivation of land;
- 15 (2) Production of agricultural crops;
- 16 (3) Raising of poultry;
- 17 (4) Production of eggs;
- 18 (5) Production of milk;
- 19 (6) Production of fruit or other horticultural crops;
- 20 (7) Production of livestock, including pasturage; and

21 (8) Production of bees and their products.] AN OPERATION FOR THE
22 ON-FARM PRODUCTION, HARVESTING, PROCESSING, OR MARKETING OF ANY
23 AGRICULTURAL, HORTICULTURAL, SILVICULTURAL, AQUACULTURAL, OR
24 APICULTURAL PRODUCT THAT HAS BEEN GROWN BY THE FARMER.

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

- 26 [(1) An agricultural operation that does not conform to federal, State, or
27 local health or zoning requirements;
- 28 (2) A federal, State, or local agency when enforcing air, water quality, or
29 other environmental standards under federal, State, or local law; or
- 30 (3) An agricultural operation that is conducted in a negligent manner.]

31 (1) PROHIBIT A FEDERAL, STATE, OR LOCAL GOVERNMENT FROM
32 ENFORCING HEALTH, ENVIRONMENTAL, ZONING, OR ANY OTHER APPLICABLE LAW;

1 (2) RELIEVE ANY AGRICULTURAL OPERATOR FROM THE
2 RESPONSIBILITY OF COMPLYING WITH THE TERMS OF ANY APPLICABLE FEDERAL,
3 STATE, AND LOCAL PERMIT REQUIRED FOR THE OPERATION;

4 (3) RELIEVE ANY AGRICULTURAL OPERATOR FROM THE
5 RESPONSIBILITY OF COMPLYING WITH ANY FEDERAL, STATE, OR LOCAL HEALTH,
6 ENVIRONMENTAL, AND ZONING REQUIREMENT, OR

7 (4) RELIEVE ANY AGRICULTURAL OPERATOR FROM LIABILITY FOR
8 CONDUCTING AN AGRICULTURAL OPERATION IN A NEGLIGENT MANNER.

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

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

14 (2) A private action may not be sustained on the grounds that the
15 operation interferes or has interfered with the use or enjoyment of other property,
16 whether public or private.] CONFORMS TO FEDERAL, STATE, AND LOCAL HEALTH,
17 ENVIRONMENTAL, ZONING, AND PERMIT REQUIREMENTS RELATING TO ANY
18 NUISANCE CLAIM AND IS NOT CONDUCTED IN A NEGLIGENT MANNER:

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

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

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

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

29 (2) IS INITIATED WITHOUT SUBSTANTIAL JUSTIFICATION OR IN BAD
30 FAITH; AND

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

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

36 (2) THIS SECTION DOES NOT AFFECT, AND MAY NOT BE CONSTRUED AS
37 AFFECTING, ANY DEFENSES AVAILABLE AT COMMON LAW TO A DEFENDANT WHO IS

1 ENGAGED IN AN AGRICULTURAL OPERATION AND SUBJECT TO AN ACTION FOR
2 NUISANCE.

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