
By: ~~Senator Baker~~ **Senators Baker, Colburn, and Haines**

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 1998

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)

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

1 acclaimed agricultural land preservation program, Program Open Space, Smart
2 Growth, and Rural Legacy programs; and

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

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

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

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

15 **Article - Courts and Judicial Proceedings**

16 5-403.

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

- 19 (1) Cultivation of land;
- 20 (2) Production of agricultural crops;
- 21 (3) Raising of poultry;
- 22 (4) Production of eggs;
- 23 (5) Production of milk;
- 24 (6) Production of fruit or other horticultural crops;
- 25 (7) Production of livestock, including pasturage; and

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

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

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

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

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

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

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

9 (3) RELIEVE ANY AGRICULTURAL OPERATOR FROM THE
10 RESPONSIBILITY OF COMPLYING WITH ANY FEDERAL, STATE, OR LOCAL HEALTH,
11 ENVIRONMENTAL, AND ZONING REQUIREMENT, OR

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

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

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

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

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

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

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

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

34 ~~(2) IS INITIATED WITHOUT SUBSTANTIAL JUSTIFICATION OR IN BAD~~
35 ~~FAITH; AND~~

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

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

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

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