
By: **Delegates Elmore, Aumann, Bartlett, Boschert, Boteler, Bozman, Cane, Conway, Cryor, Dumais, Eckardt, Elliott, Frank, Gilleland, Glassman, Goodwin, Haddaway, Hogan, Impallaria, Jameson, Jennings, Kach, Kohl, Krebs, Kullen, Levy, Mayer, McComas, McConkey, McDonough, McKee, McMillan, Miller, Myers, O'Donnell, Parrott, Rudolph, Shank, Shewell, Smigiel, Sophocleus, Sossi, Stocksdale, Stull, Walkup, Weldon, and Wood**

Introduced and read first time: January 26, 2006

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Agricultural Operations - Nuisance Actions - Requirements**

3 FOR the purpose of requiring a person filing a nuisance action against an agricultural
4 operation in any court to first file a complaint with a certain local agency and to
5 obtain a decision or recommendation from the local agency on the nuisance
6 complaint; excepting government agencies; and generally relating to nuisance
7 actions against agricultural operations.

8 BY repealing and reenacting, with amendments,
9 Article - Courts and Judicial Proceedings
10 Section 5-403
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2005 Supplement)

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, "agricultural operation" means an operation for the
18 processing of agricultural crops or on-farm production, harvesting, or marketing of
19 any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that
20 has been grown, raised, or cultivated by the farmer.

21 (b) (1) This section does not:

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

3 (ii) Relieve any agricultural operation from the responsibility of
4 complying with the terms of any applicable federal, State, and local permit required
5 for the operation;

6 (iii) Relieve any agricultural operator from the responsibility to
7 comply with any federal, State, or local health, environmental, and zoning
8 requirement; or

9 (iv) Relieve any agricultural operation from liability for conducting
10 an agricultural operation in a negligent manner.

11 (2) This section does not apply to any agricultural operation that is
12 operating without a fully and demonstrably implemented nutrient management plan
13 for nitrogen and phosphorus if otherwise required by law.

14 (c) If an agricultural operation has been under way for a period of 1 year or
15 more and if the operation is in compliance with applicable federal, State, and local
16 health, environmental, zoning, and permit requirements relating to any nuisance
17 claim and is not conducted in a negligent manner:

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

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

23 (d) (1) This section does not create, and may not be construed as creating, a
24 new cause of action or substantive legal right against a person who is engaged in an
25 agricultural operation.

26 (2) This section does not affect, and may not be construed as affecting,
27 any defenses available at common law to a defendant who is engaged in an
28 agricultural operation and subject to an action for nuisance.

29 (E) (1) THIS SUBSECTION DOES NOT APPLY TO AN ACTION BROUGHT BY A
30 GOVERNMENT AGENCY.

31 (2) IF A LOCAL AGENCY IS AUTHORIZED TO HEAR A NUISANCE
32 COMPLAINT AGAINST AN AGRICULTURAL OPERATION, A PERSON MAY NOT BRING A
33 NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION IN ANY COURT UNTIL:

34 (I) THE PERSON HAS FILED A COMPLAINT WITH THE LOCAL
35 AGENCY; AND

36 (II) THE LOCAL AGENCY HAS MADE A DECISION OR
37 RECOMMENDATION ON THE COMPLAINT.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2006.