
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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2006

CHAPTER _____

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 or
 5 refer a complaint to the State agricultural mediation program in the
 6 Department of Agriculture and to obtain a decision or recommendation from the
 7 local agency or a certain certification from the Department on the nuisance
 8 complaint; excepting government agencies from certain requirements; and
 9 generally relating to nuisance actions against agricultural operations.

10 BY repealing and reenacting, with amendments,
 11 Article - Courts and Judicial Proceedings
 12 Section 5-403
 13 Annotated Code of Maryland
 14 (2002 Replacement Volume and 2005 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 5-403.

3 (a) In this section, "agricultural operation" means an operation for the
4 processing of agricultural crops or on-farm production, harvesting, or marketing of
5 any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that
6 has been grown, raised, or cultivated by the farmer.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (I) THE PERSON HAS FILED A COMPLAINT WITH THE LOCAL
7 AGENCY; AND

8 (II) THE LOCAL AGENCY HAS MADE A DECISION OR
9 RECOMMENDATION ON THE COMPLAINT.

10 (3) IF THERE IS NO LOCAL AGENCY AUTHORIZED TO HEAR A NUISANCE
11 COMPLAINT AGAINST AN AGRICULTURAL OPERATION, A PERSON MAY NOT BRING A
12 NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION IN ANY COURT UNTIL:

13 (I) THE PERSON HAS REFERRED A COMPLAINT TO THE STATE
14 AGRICULTURAL MEDIATION PROGRAM IN THE DEPARTMENT OF AGRICULTURE
15 UNDER TITLE 1, SUBTITLE 1A OF THE AGRICULTURE ARTICLE; AND

16 (II) THE DEPARTMENT CERTIFIES THAT MEDIATION HAS BEEN
17 CONCLUDED.

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