

SENATE BILL 163

M2, D3, J1
SB 706/12 – JPR

3lr1541
CF 3lr1532

By: **Senator Pipkin**

Introduced and read first time: January 17, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Fishing and Seafood Operations – Nuisance Actions – Exemption**

3 FOR the purpose of expanding the application of certain provisions of law relating to
4 the protection of agricultural operations from certain actions under certain
5 circumstances to apply to certain commercial fishing and seafood operations;
6 exempting certain commercial fishing and seafood operations from nuisance
7 lawsuits; authorizing an appeal of a certain decision on a nuisance complaint
8 against a commercial fishing or seafood operation to a circuit court in a certain
9 manner; defining a certain term; altering the definition of a certain term; and
10 generally relating to nuisance actions against commercial fishing or seafood
11 operations.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 5–403
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2012 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Health – General
19 Section 20–301
20 Annotated Code of Maryland
21 (2009 Replacement Volume and 2012 Supplement)

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

24 **Article – Courts and Judicial Proceedings**

25 5–403.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
2 MEANINGS INDICATED.

3 [(1)] (2) [In this section, “agricultural] **“AGRICULTURAL operation”**
4 means an operation for the processing of agricultural crops or on–farm production,
5 harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural,
6 or apicultural product that has been grown, raised, or cultivated by the farmer.

7 (3) (1) **“COMMERCIAL FISHING OR SEAFOOD OPERATION”**
8 MEANS AN OPERATION FOR THE HARVESTING, STORAGE, PROCESSING,
9 MARKETING, SALE, PURCHASE, TRADE, OR TRANSPORT OF ANY SEAFOOD
10 PRODUCT.

11 (II) **“COMMERCIAL FISHING OR SEAFOOD OPERATION”**
12 INCLUDES THE DELIVERY, STORAGE, AND MAINTENANCE OF EQUIPMENT AND
13 SUPPLIES, AND CHARTER BOAT FISHING AND RELATED ARRIVAL AND
14 DEPARTURE ACTIVITIES, EQUIPMENT, AND SUPPLIES.

15 [(2)] (4) Notwithstanding § 5–101 of the Natural Resources Article,
16 “silvicultural operation” means implementation of forestry practices, including the
17 establishment, composition, growth, and harvesting of trees.

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

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

21 (ii) Relieve any agricultural [or], silvicultural, **OR**
22 **COMMERCIAL FISHING OR SEAFOOD** operation from the responsibility of complying
23 with the terms of any applicable federal, State, and local permit required for the
24 operation;

25 (iii) Relieve any agricultural [or], silvicultural, **OR**
26 **COMMERCIAL FISHING OR SEAFOOD** operator from the responsibility to comply with
27 any federal, State, or local health, environmental, and zoning requirement; or

28 (iv) Relieve any agricultural [or], silvicultural, **OR**
29 **COMMERCIAL FISHING OR SEAFOOD** operation from liability for conducting an
30 agricultural **OR A COMMERCIAL FISHING OR SEAFOOD** operation in a negligent
31 manner.

32 (2) This section does not apply to [any]:

1 **(I) ANY agricultural operation that is operating without a fully**
2 **and demonstrably implemented nutrient management plan for nitrogen and**
3 **phosphorus if otherwise required by law; OR**

4 **(II) ANY COMMERCIAL FISHING OR SEAFOOD OPERATION**
5 **THAT IS NOT IN COMPLIANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL**
6 **REGULATIONS.**

7 (c) If an agricultural [operation or], A silvicultural, **OR A COMMERCIAL**
8 **FISHING OR SEAFOOD** operation has been under way for a period of 1 year or more
9 and if the operation is in compliance with applicable federal, State, and local health,
10 environmental, zoning, and permit requirements relating to any nuisance claim and is
11 not conducted in a negligent manner:

12 (1) The operation, including any sight, noise, odors, dust, or insects
13 resulting from the operation, may not be deemed to be a public or private nuisance;
14 and

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

18 (d) (1) This section does not create, and may not be construed as creating,
19 a new cause of action or substantive legal right against a person who is engaged in an
20 agricultural [or], A silvicultural, **OR A COMMERCIAL FISHING OR SEAFOOD**
21 operation.

22 (2) This section does not affect, and may not be construed as affecting,
23 any defenses available at common law to a defendant who is engaged in an
24 agricultural [or], A silvicultural, **OR A COMMERCIAL FISHING OR SEAFOOD**
25 operation and subject to an action for nuisance.

26 (e) (1) This subsection does not apply to an action brought by a
27 government agency.

28 (2) If a local agency is authorized to hear a nuisance complaint against
29 an agricultural **OR A COMMERCIAL FISHING OR SEAFOOD** operation, a person may
30 not bring a nuisance action against an agricultural **OR A COMMERCIAL FISHING OR**
31 **SEAFOOD** operation in any court until:

32 (i) The person has filed a complaint with the local agency; and

33 (ii) The local agency has made a decision or recommendation on
34 the complaint.

1 **(3) A DECISION OF A LOCAL AGENCY ON A NUISANCE COMPLAINT**
2 **AGAINST A COMMERCIAL FISHING OR SEAFOOD OPERATION MAY BE APPEALED**
3 **TO A CIRCUIT COURT IN ACCORDANCE WITH TITLE 7, CHAPTER 200 OF THE**
4 **MARYLAND RULES.**

5 **[(3)](4)** If there is no local agency authorized to hear a nuisance
6 complaint against an agricultural operation, a person may not bring a nuisance action
7 against an agricultural operation in any court until:

8 (i) The person has referred a complaint to the State
9 Agricultural Mediation Program in the Department of Agriculture under Title 1,
10 Subtitle 1A of the Agriculture Article; and

11 (ii) The Department certifies that mediation has been
12 concluded.

13 **Article – Health – General**

14 20–301.

15 (a) In this subtitle, “nuisance” means a condition that is dangerous to health
16 or safety including:

17 (1) An inadequately protected swimming pool;

18 (2) An unprotected open ditch;

19 (3) An unsanitary outhouse;

20 (4) A foul pigpen;

21 (5) An improperly functioning sewage system;

22 (6) An unkempt junkyard;

23 (7) An unkempt scrap metal processing facility;

24 (8) An excessive accumulation of trash or garbage;

25 (9) A dead animal;

26 (10) A contaminated water supply;

27 (11) An inadequately protected water supply;

28 (12) A rodent harborage;

1 (13) Poor housekeeping that could endanger the health of the owner,
2 occupant, employee, or a neighbor; or

3 (14) Any condition that may endanger health that may be transmitted
4 by means including:

5 (i) Running streams;

6 (ii) Surface drainage;

7 (iii) Air currents;

8 (iv) Birds;

9 (v) Domestic animals; or

10 (vi) Human beings.

11 (b) "Nuisance" does not include [any]:

12 **(1) ANY condition resulting from a farm operation following generally**
13 **accepted agricultural practices that are not creating a condition dangerous to health or**
14 **safety; OR**

15 **(2) ANY CONDITION RESULTING FROM A COMMERCIAL FISHING**
16 **OR SEAFOOD OPERATION FOLLOWING GENERALLY ACCEPTED INDUSTRY**
17 **STANDARDS AND PROCESSES THAT ARE NOT CREATING A CONDITION**
18 **DANGEROUS TO HEALTH OR SAFETY.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2013.