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States' Right-To-Farm Statutes

State of Maryland

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States' Right-to-Farm Statutes

STATE OF MARYLAND

Md. Code Ann., Cts. & Jud. Proc. § 5-403

Current through all legislation from the 2016 Regular Session of the General Assembly in effect through July 1, 2016.

§ 5-403. Agricultural or silvicultural operations

Definitions

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Agricultural operation” means an operation for the processing of agricultural crops or on-farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer.
- (3) (i) “Commercial fishing or seafood operation” means an operation for the harvesting, storage, processing, marketing, sale, purchase, trade, or transport of any seafood product.
- (ii) “Commercial fishing or seafood operation” includes the delivery, storage, and maintenance of equipment and supplies and charter boat fishing and related arrival and departure activities, equipment, and supplies.
- (4) Notwithstanding § 5-101 of the Natural Resources Article, “silvicultural operation” means implementation of forestry practices, including the establishment, composition, growth, and harvesting of trees.

Enforcement of health, environmental, zoning, or other laws

- (b) (1) This section does not:
- (i) Prohibit a federal, State, or local government from enforcing health, environmental, zoning, or any other applicable law;
- (ii) Relieve any agricultural, silvicultural, or commercial fishing or seafood operation from the responsibility of complying with the terms of any applicable federal, State, and local permit required for the operation;

(iii) Relieve any agricultural, silvicultural, or commercial fishing or seafood operator from the responsibility to comply with any federal, State, or local health, environmental, and zoning requirement; or

(iv) Relieve any agricultural, silvicultural, or commercial fishing or seafood operation from liability for conducting an agricultural or a commercial fishing or seafood operation in a negligent manner.

(2) This section does not apply to:

(i) Any agricultural operation that is operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law; or

(ii) Any commercial fishing or seafood operation that is not in compliance with applicable federal, State, and local laws.

Operations in compliance with permit requirements

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

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

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

Construction of section

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

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

Prerequisites to nuisance actions

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

(2) If a local agency is authorized to hear a nuisance complaint against an agricultural or a commercial fishing or seafood operation, a person may not bring a nuisance action against an agricultural or a commercial fishing or seafood operation in any court until:

- (i) The person has filed a complaint with the local agency; and
- (ii) The local agency has made a decision or recommendation on the complaint.

(3) A decision of a local agency on a nuisance complaint against a commercial fishing or seafood operation may be appealed to a circuit court in accordance with Title 7, Chapter 200 of the Maryland Rules.

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

- (i) The person has referred a complaint to the State Agricultural Mediation Program in the Department of Agriculture under Title 1, Subtitle 1A of the Agriculture Article; and
- (ii) The Department certifies that mediation has been concluded.