

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2013 Legislative Session

Legislative Day No. 2

Bill No. 10 -2013

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending certain provisions related to nuisance suits against agricultural operations; amending certain definitions; clarifying the types of properties for which certain protection applies; requiring certain mediation; and generally related to nuisance suits against agricultural operations.

Introduced and read first time _____, 2013. Ordered posted and hearing scheduled.

By order _____
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2013.

By order _____
Stephen LeGendre, Administrator

This Bill was read the third time on _____, 2013 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2013 at ___ a.m./p.m.

By order _____
Stephen LeGendre, Administrator

Approved/Vetoed by the County Executive _____, 2013

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the Howard
2 County Code is amended as follows:

3

4 *By amending:*

5 *Title 12 – Health and Social Services*

6 *Section 12.111 “Nuisance suits against agricultural operations”*

7

8 **Title 12. Health and Social Services.**

9 **Subtitle 1. Health Code.**

10

11 **Section 12.111. Nuisance suits against agricultural operations.**

12 (a) *Short Title.* This section shall be known and may be cited as the Howard County Right-To-
13 Farm Act, bill No. 22, 1989.

14 (b) *Public Policy.* The practice of agriculture has been a mainstay of the economy of Howard
15 County since the land was settled. It is a valued and respected way of life, and the preferred land
16 use in the Rural Conservation (RC) Zoning District, a valued land use in the Rural Residential
17 (RR) Zoning District and on PROPERTY THAT HAS AN AGRICULTURAL USE ASSESSMENT AS
18 DETERMINED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION. [[(1) individual
19 residential properties of 20 acres or more that are subject to perpetual conservation easements; or
20 (2) two contiguous residential properties where the total contiguous acreage equals 20 acres or
21 more and which are subject to one or more perpetual conservation easements.]] The Howard
22 County Council hereby finds and declares that the practice of farming in Howard County should
23 be protected and encouraged.

24 (c) *Definitions.* [[This]] IN THIS section *agricultural operation* INCLUDES AGRICULTURE,
25 APIARIES, HORTICULTURE, ORCHARDS, AGRICULTURAL NURSERIES, VITICULTURE, AQUACULTURE,
26 SILVICULTURE, ANIMAL AND POULTRY HUSBANDRY, AND FARMING AS DEFINED IN THE HOWARD
27 COUNTY ZONING REGULATIONS. AN AGRICULTURAL OPERATION MAY OCCUR WITHOUT
28 LIMITATION AS TO HOURS OF OPERATION. THE HARVESTING AND PROCESSING OF AGRICULTURAL
29 CROPS AND OTHER USES OR STRUCTURES DIRECTLY RELATED TO OR ACCESSORY TO THE PREMISES
30 FOR FARMING ARE CONSIDERED PART OF AN AGRICULTURAL OPERATION. AGRICULTURAL
31 PRACTICES INCLUDED AS PART OF AN AGRICULTURAL OPERATION INCLUDE, BUT ARE NOT LIMITED

1 TO: [[includes any one or a combination of the following activities as well as the necessary
2 accessory uses for packing, processing, treating, storing or marketing the produce; provided
3 however, the operation of any such accessory uses shall be secondary to that of normal
4 agricultural activities:]]

- 5 [(1) Cultivation of land.
- 6 (2) Production of agricultural crops.
- 7 (3) Raising of poultry.
- 8 (4) Production of eggs.
- 9 (5) Production of milk.
- 10 (6) Production of fruit or other horticultural crops.
- 11 (7) Production of livestock, including pasturage.
- 12 (8) Production of bees and their products.
- 13 (9) Production of fish.
- 14 (10) Production of trees.
- 15 (11) The breeding, raising, training and general care of livestock by children and youth
16 enrolled in an organized program such as 4-H for uses other than food, such as
17 sport or show purposes, as pets or for family recreation, shall be considered a
18 normal farming function provided that good agricultural management practices
19 are followed.]]

- 20 (1) THE TRANSPORTATION OF AGRICULTURAL PRODUCTS;
- 21 (2) THE TRANSPORTATION, STORAGE, HANDLING, AND APPLICATION OF FERTILIZER,
22 SOIL AMENDMENTS, PESTICIDES, AND MANURE; AND
- 23 (3) THE OPERATION OF AGRICULTURAL MACHINERY AND EQUIPMENT.

24 (d) *Protection for Agricultural Operations.* In [[RR]]RC and [[RC]]RR zoning districts, and on
25 PROPERTY THAT HAS AN AGRICULTURAL USE ASSESSMENT AS DETERMINED BY THE STATE
26 DEPARTMENT OF ASSESSMENTS AND TAXATION, [(1) individual residential properties of 20 acres
27 or more that are subject to perpetual conservation easements; or (2) two contiguous residential
28 properties where the total contiguous acreage equals 20 acres or more and which are subject to
29 one or more perpetual conservation easements,]] an agricultural operation may not LEGALLY BE
30 CONSIDERED [[be or become]] a public or private nuisance; and a private action may not be
31 sustained on the grounds that the agricultural operation interferes or has interfered with the use
32 or enjoyment of other property, whether public or private, if:

1 (1) The agricultural operation existed before a change occurred in the ADJOINING land
2 use or occupancy of land [[in the locality of the agricultural operation]] and,
3 before such change in land use or occupancy of land, the agricultural operation
4 did not constitute a nuisance; or

5 (2) The agricultural operation, including any change in the operation, has been
6 ongoing for one year or more and the operation or change did not constitute a
7 nuisance from the date the operation began or the date the change in the operation
8 began; and

9 (3) The agricultural operation is conducted in accordance with generally accepted
10 agricultural management practices.

11 (e) *Exceptions.* This section does not apply to:

12 (1) An agricultural operation that does not conform to Federal, State or local health or
13 zoning requirements;

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

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

17 (F) *LIMITATIONS OF ACTIONS.* NOTWITHSTANDING ANY PROVISION OF THIS SECTION, NO ACTION
18 ALLEGING THAT AN AGRICULTURAL OPERATION CONDUCTED IN ACCORDANCE WITH GENERALLY
19 ACCEPTED AGRICULTURAL PRACTICES HAS INTERFERED WITH THE REASONABLE USE OR
20 ENJOYMENT OF REAL PROPERTY OR PERSONAL WELL-BEING SHALL BE MAINTAINED IF THE
21 PLAINTIFF HAS NOT SOUGHT MEDIATION THROUGH THE MARYLAND AGRICULTURAL CONFLICT
22 RESOLUTION SERVICE WITHIN THE MARYLAND DEPARTMENT OF AGRICULTURE, AS PROVIDED FOR
23 IN TITLE 5, SUBTITLE 4 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE OF THE ANNOTATED
24 CODE OF MARYLAND.

25 [[(f)]](G) *Legal Actions in Bad Faith or without Substantial Justification.* In any civil action, if a
26 court finds that the conduct of a plaintiff in maintaining a nuisance CASE against the owner of an
27 agricultural operation was in bad faith or without substantial justification, the court may require
28 the plaintiff to pay to the owner of the agricultural operation the costs of the proceeding and the
29 reasonable expenses, including reasonable attorney's fees, incurred by the owner of the
30 agricultural operation in defending against the legal action.

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2 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland,
3 *that this Act shall become effective 61 days after its enactment.*