

**ESB 5962** - H COMM AMD

By Committee on Economic Development, Agriculture & Trade

ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 7.48 RCW  
4 to read as follows:

5 (1) A farmer who prevails in any action, claim, or counterclaim  
6 alleging that agricultural activity on a farm constitutes a nuisance  
7 may recover the full costs and expenses determined by a court to have  
8 been reasonably incurred by the farmer as a result of the action,  
9 claim, or counterclaim.

10 (2) A farmer who prevails in any action, claim, or counterclaim (a)  
11 based on an allegation that agricultural activity on a farm is in  
12 violation of specified laws, rules, or ordinances, (b) where such  
13 activity is not found to be in violation of the specified laws, rules,  
14 or ordinances, and (c) actual damages are realized by the farm as a  
15 result of the action, claim, or counterclaim, may recover the full  
16 costs and expenses determined by a court to have been reasonably  
17 incurred by the farmer as a result of the action, claim, or  
18 counterclaim.

19 (3) The costs and expenses that may be recovered according to  
20 subsection (1) or (2) of this section include actual damages and  
21 reasonable attorneys' fees and costs. For the purposes of this  
22 subsection, "actual damages" include lost revenue and the replacement  
23 value of crops or livestock damaged or unable to be harvested or sold  
24 as a result of the action, claim, or counterclaim.

25 (4) In addition to any sums recovered according to subsection (1)  
26 or (2) of this section, a farmer may recover exemplary damages if a  
27 court finds that the action, claim, or counterclaim was initiated  
28 maliciously and without probable cause.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 7.48 RCW  
2 to read as follows:

3        A state or local agency required to investigate a complaint  
4 alleging agricultural activity on a farm is in violation of specified  
5 laws, rules, or ordinances and where such activity is not found to be  
6 in violation of such specified laws, rules, or ordinances may recover  
7 its full investigative costs and expenses if a court determines that  
8 the complaint was initiated maliciously and without probable cause.

9        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 64.06 RCW  
10 to read as follows:

11        A seller of real property located within one mile of the property  
12 boundary of a farm or farm operation shall make available to the buyer  
13 the following statement:    "This notice is to inform prospective  
14 residents that the real property they are about to acquire lies within  
15 one mile of the property boundary of a farm.    The farm may generate  
16 usual and ordinary noise, dust, odors, and other associated conditions,  
17 and these practices are protected by the Washington right to farm act."

18        **Sec. 4.**    RCW 70.94.640 and 1981 c 297 s 30 are each amended to read  
19 as follows:

20        (1)    Odors or fugitive dust caused by agricultural activity  
21 consistent with good agricultural practices on agricultural land are  
22 exempt from the requirements of this chapter unless they have a  
23 substantial adverse effect on public health.    In determining whether  
24 agricultural activity is consistent with good agricultural practices,  
25 the department of ecology or board of any authority shall consult with  
26 a recognized third-party expert in the activity prior to issuing any  
27 notice of violation.

28        (2)    Any notice of violation issued under this chapter pertaining to  
29 odors or fugitive dust caused by agricultural activity shall include a  
30 statement as to why the activity is inconsistent with good agricultural  
31 practices, or a statement that the odors or fugitive dust have  
32 substantial adverse effect on public health.

33        (3)    In any appeal to the pollution control hearings board or any  
34 judicial appeal, the agency issuing a final order pertaining to odors  
35 or fugitive dust caused by agricultural activity shall prove the

1 activity is inconsistent with good agricultural practices or that the  
2 odors or fugitive dust have a substantial adverse impact on public  
3 health.

4 (4) If a person engaged in agricultural activity on a contiguous  
5 piece of agricultural land sells or has sold a portion of that land for  
6 residential purposes, the exemption of this section shall not apply.

7 (5) As used in this section:

8 (a) "Agricultural activity" means the growing, raising, or  
9 production of horticultural or viticultural crops, berries, poultry,  
10 livestock, shellfish, grain, mint, hay, and dairy products.

11 (b) "Good agricultural practices" means economically feasible  
12 practices which are customary among or appropriate to farms and ranches  
13 of a similar nature in the local area.

14 (c) "Agricultural land" means at least five acres of land devoted  
15 primarily to the commercial production of livestock ~~((or))~~,  
16 agricultural commodities, or cultured aquatic products.

17 (d) "Fugitive dust" means a particulate emission made airborne by  
18 human activity, forces of wind, or both, and which do not pass through  
19 a stack, chimney, vent, or other functionally equivalent opening.

20 (6) The exemption for fugitive dust provided in subsection (1) of  
21 this section does not apply to facilities subject to RCW 70.94.151 as  
22 specified in WAC 173-400-100 as of the effective date of this act,  
23 70.94.152, or 70.94.161."

24 Correct the title.

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