
ENGROSSED SENATE BILL 5962

State of Washington

59th Legislature

2005 Regular Session

By Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin

Read first time 02/16/2005. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to customary agricultural practices; amending RCW
2 70.94.640; adding a new section to chapter 7.48 RCW; and adding a new
3 section to chapter 64.06 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

7 (1)(a) If a farmer prevails in any action, claim, or counterclaim
8 that alleges agricultural activity on a farm to be a nuisance, or that
9 is based on an unverified complaint, the farmer may recover the full
10 amount of costs and expenses determined by the court to have been
11 reasonably incurred by the farmer in defending against the action,
12 claim, or counterclaim. Such costs and expenses may include:

13 (i) Actual damages, including lost revenue and the replacement
14 value of crops or livestock damaged or unable to be harvested or sold
15 as a result of the action, claim, or counterclaim; and

16 (ii) Reasonable attorneys' fees and costs.

17 (b) If the court finds that the action, claim, or counterclaim was
18 initiated maliciously and without probable cause, the farmer may also
19 recover exemplary damages.

1 (2) A court may order the person making an unverified complaint to
2 pay the investigating agency its full investigative costs.

3 (3) As used in this section, "unverified complaint" means a
4 complaint filed by a person in which agricultural activity on a farm is
5 alleged to have violated specified laws, rules, or ordinances and upon
6 investigation the investigating agency or a court determines that the
7 farm is in conformity with the specified laws, rules, or ordinances
8 allegedly violated and the complaint was unfounded at the time it was
9 initiated.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.06 RCW
11 to read as follows:

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

19 **Sec. 3.** RCW 70.94.640 and 1981 c 297 s 30 are each amended to read
20 as follows:

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

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

34 (3) In any appeal to the pollution control hearings board or any
35 judicial appeal, the agency issuing a final order pertaining to odors
36 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, 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 agricultural
16 commodities.

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.

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