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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 136

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO AGRICULTURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 1401 of Title 3 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1401 Agricultural and forestal operations not considered nuisances; exception.

No agricultural or forestal operation within this State ~~which has been in operation for a period of more than 1~~  
~~year~~ shall be considered a nuisance, either public or private, as the result of a changed condition in or about the locality  
where such agricultural or forestal operation is located, if that agricultural or forestal operation: (i) has existed for 1 year or  
more; or (ii) is in an area zoned for agricultural use, including areas within Agricultural Residential Districts and other  
districts as specified by county code. For the purpose of this section, "agricultural operation" shall be defined as set forth in  
§ 8141(a) of Title 10. In any nuisance action, public or private, against an agricultural operation or its principals or  
employees, including ~~forestal~~ forestal activity, proof that the agricultural operation, including ~~forestal~~ forestal activity, has  
existed for 1 year or more, or is in an area zoned for agricultural use, including areas within Agricultural Residential  
Districts and other districts as specified by county code, is an absolute defense to the nuisance action, if the operation is in  
compliance with all applicable state and federal laws, regulations, and permits. If the operation is in compliance with all  
applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with  
good agricultural practice. No state or local law-enforcement agency may bring a criminal or civil action against an  
agricultural operation for an activity that is in compliance with all applicable state and federal laws, regulations, and  
permits. An individual shall not bring an action or proceeding based on a claim of nuisance arising from an agricultural  
operation conducted in a manner consistent with good agricultural practice. If a defendant is a prevailing party in an action  
or proceeding based on a claim of nuisance arising from an agricultural operation of a type described in the first sentence of  
this section, the plaintiff shall pay court costs and reasonable attorney's fees incurred by the defendant, if the court  
determines that the claim is frivolous. A farm or agricultural operation located in an area zoned for agricultural use shall not

22 be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the  
23 farm or agricultural operation. This section shall not apply when the nuisance is determined to exist as the result of the  
24 negligent or improper operation of any agricultural or forestal operation, or when such operation is being operated in  
25 violation of state or federal law or any local or county ordinance.

#### SYNOPSIS

The purpose of the Bill is to protect farmers and ranchers from nuisance lawsuits filed by individuals who inhabit areas where agricultural operations lawfully exist, and who exercise nuisance actions to attempt to stop operation and production. This Bill protects farms and agricultural operations that use commonly accepted agricultural practices from being considered a nuisance in areas zoned for agricultural uses and operations that have existed for a period of 1 year or longer. This will enable the State to protect the production of food, fuel and fiber within the state. AR Districts provide for a full range of agricultural activities and protect agricultural lands, as one of the State's most valuable natural resources, from the depreciating effect of uses deemed objectionable, hazardous or unsightly (Kent County Zoning Code Chapter 205-60 Article VI and Sussex County Zoning Code Chapter 115-19 Article IV). Moreover, AR Districts serve as a transitional buffer zone between agricultural and residential uses and are also intended to protect watersheds, water resources, and forest areas. Kent and Sussex county ordinances permit specified land uses within AR Districts to provide for a wide range of agricultural uses and farm related services while also providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity. New Castle County Unified Development Code (UDC) permits agricultural uses in eight Urban and Suburban-Transition Districts and seven Suburban and Special Character Districts (UDC Chapter 40). Permitted uses within these districts include crop production and animal production, and any other agricultural uses as recognized by Delaware law. Additional uses, permitted for Limited Review, include Farm Market and Clearing activities (UDC Land Use tables 40.03.110 A and 40.03.110 B). It is the express intention of this act to establish as the policy of this State the protection of agricultural operations from nuisance actions, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in Delaware.

Author: Senator Ennis