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**HOUSE BILL NO. 1430**

Offered January 9, 2013

Prefiled December 20, 2012

A *BILL to amend and reenact §§ 3.2-300 and 3.2-302 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 3.2 a section numbered 3.2-302.1, relating to the Right to Farm Act.*

Patrons—Lingamfelter, Bell, Robert B., Anderson, Cole, Gilbert, Helsel, Hodges and Marshall, R.G.;  
Senators: Black, McDougle and Stuart

Referred to Committee on Agriculture, Chesapeake and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-300 and 3.2-302 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 3.2 a section numbered 3.2-302.1 as follows:**

**§ 3.2-300. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity and their byproducts. "Agricultural operation" shall include the commerce of farm-to-business and farm-to-consumer sales. For purposes of this chapter, the commerce and sale of certain items, such as art, literature, artifacts, furniture, food, beverages, and other items that are incidental to the agricultural operation, and constitute less than a majority amount of production or sales, or less than a majority of annual revenues from such sales, shall be deemed part of the agricultural operation.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

**§ 3.2-302. When agricultural operations do not constitute nuisance.**

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

B. The provisions of subsection A shall not affect or defeat the right of any person to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person.

C. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances.

D. Any ordinance shall be null and void that is directed at persons, property, or activity on land zoned agricultural or silvicultural that seeks to restrict the free exercise of rights guaranteed by the Constitution of Virginia or United States Constitution, including the right of free speech, to freedom of the press, of peaceable assembly, and freedom of religion, or that violates the Constitution of Virginia or United States Constitution, including the prohibitions on unreasonable searches and seizures, or rights protected under Amendments II, IX, and X of the United States Constitution.

**§ 3.2-302.1. Remedies**

A. Any county that violates any provision of this chapter shall be liable to aggrieved persons in the amounts equal to the fines and penalties that the county seeks to impose on such aggrieved persons, plus attorney fees.

B. Any official or employee of a county who violates any provision of this chapter, or whose interpretation or enforcement of duties operates contrary to this chapter, shall be personally liable to aggrieved persons in the amount equal to the fines and penalties that such county official or employee seeks to impose on such aggrieved persons, plus attorney fees, and shall otherwise be subject to the penalties that the official or employee seeks to impose, whether civil or criminal. Such official or

58 *employee shall not be protected by sovereign immunity for causes of action in trespass or tort.*

59 **2. That the provisions of this act amending and reenacting §§ 3.2-300 and 3.2-302 of the Code of**  
60 **Virginia shall be retroactively effective beginning July 1, 1981.**

61 **3. That the provisions of this act amending and reenacting §§ 3.2-300 and 3.2-302 of the Code of**  
62 **Virginia shall not be construed in favor of any county action, any county interpretation of the**  
63 **Right to Farm Act (§ 3.2-300 et seq. of the Code of Virginia), any county official's action, or any**  
64 **construction, interpretation, administrative action, adjudication, or application of the Right to**  
65 **Farm Act prior to adoption of the provisions of this act, and shall not be construed against any**  
66 **farmer or citizen for the same.**