

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 779

An Act to amend and reenact Chapter 293 of the Acts of Assembly of 1991, carried by reference in the Code of Virginia as § 3.1-22.28, and to amend and reenact § 3.1-22.29 of the Code of Virginia, relating to the right to farm.

[S 513]

Approved April 11, 1994

Be it enacted by the General Assembly of Virginia:

1. That Chapter 293 of the Acts of Assembly of 1991, carried by reference in the Code of Virginia as § 3.1-22.28, and § 3.1-22.29 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-22.28. Right to farm; restrictive ordinances.

It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this chapter to reduce the loss to the Commonwealth of its agricultural resources by limiting *In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purpose of this section, "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. However, counties may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No county, city or town shall enact zoning ordinances which would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.*

§ 3.1-22.29. 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, ~~by any changed conditions in or about the locality thereof after the same has been in operation for more than one year 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 ~~or when there has been a significant change in the operation itself.~~

B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production ~~for sale~~ of crops, or animals, or fowl, including but not limited to the production ~~for sale~~ of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; ~~and trees in such quantity and so spaced and maintained as to constitute a forest area and the production and harvest of products from silviculture activity.~~

C. The provisions of subsection A shall not affect or defeat the right of any person, firm, or corporation 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, firm, or corporation.

D. 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; however, 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 ~~or when there has been a significant change in the operation itself.~~

E. ~~This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.~~