

# FINAL BILL REPORT

## ESB 5962

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### C 511 L 05

Synopsis as Enacted

**Brief Description:** Concerning customary agricultural practices.

**Sponsors:** Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin.

**Senate Committee on Agriculture & Rural Economic Development**  
**House Committee on Economic Development, Agriculture & Trade**

**Background:** In a nuisance lawsuit, a plaintiff may sue a property owner based on the claim that the defendant makes unreasonable use of their property to the detriment of the plaintiff's property. These lawsuits may, for example, seek to prevent noise or odors.

The Washington Right to Farm Act provides that agricultural activities conducted on farmland, if consistent with good agricultural practice and established prior to surrounding non-agricultural activities, are presumed to be reasonable and therefore do not constitute "nuisances" that may be prevented in a lawsuit. An exception is specified for activities that have a substantial adverse effect on public health and safety. However, if agricultural activities are undertaken in conformity with applicable laws and regulations, they are presumed to be good agricultural practices not affecting public health and safety.

It is suggested that farmers in urbanizing areas are subjected to unfounded nuisance lawsuits, and that these unfounded lawsuits should be discouraged. It is also suggested that certain farming practices should be exempt from air pollution standards under the state Clean Air Act (violation of which may potentially subject a farm to liability).

**Summary:** Nuisance Claims. A farmer who prevails in a claim alleging that agricultural activity on a farm constitutes a nuisance may recover full, reasonably incurred costs and expenses, as determined by a court.

Violation of Specified Laws. A farmer who prevails in a claim: (1) based on an allegation that agricultural activity on a farm violates specified laws; (2) where the activity is not found to violate the laws; and (3) actual damages are realized by the farm, may recover full, reasonably incurred costs and expenses, as determined by a court. A farmer may not recover costs and expenses from a state or local agency investigating or pursuing an enforcement action.

Recoverable costs and expenses include actual damages--including lost revenue and the replacement value of crops or livestock damaged or unable to be harvested or sold--and reasonable attorneys' fees and costs. A farmer may, in addition, recover exemplary (punitive) damages if a court finds that the claim was initiated maliciously and without probable cause.

Agency Investigative Costs. Where a state or local agency is required to investigate a complaint alleging that agricultural activity on a farm violates specified laws, and the activity

is not found to violate the laws, the agency may recover its investigative costs and expenses if a court determines that the complaint was initiated maliciously and without probable cause.

Notice to Buyers. A seller of land located within one mile of a farm must make the following statement available to a buyer: "This notice is to inform prospective residents that the real property they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act."

Air Pollution Exemptions. Fugitive dust caused by agricultural activity on agricultural land that is consistent with good agricultural practices is expressly exempted from Washington Clean Air Act standards. "Fugitive dust" is defined as particulate emission made airborne by human activity, forces of wind, or both, which does not pass through a stack, chimney, vent, or similar opening. The exemption generally applies to soil preparation, planting, fertilizing, weed and pest control, and harvesting; it also applies to dust generation from feedlots with fewer than 1,000 head of cattle.

The newly-established dust exemption, and an existing exemption for odors, applies to dust and odor caused by shellfish production.

**Votes on Final Passage:**

Senate	47	2	
House	94	0	(House amended)
Senate	38	6	(Senate concurred)

**Effective:** July 24, 2005