

**SB 5962 - S AMD 199**

By Senators Haugen, Rasmussen, Jacobsen, Schoesler, Kline

ADOPTED 03/10/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 7.48 RCW  
4 to read as follows:

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

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

14 (ii) Reasonable attorneys' fees and costs.

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

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

20 (3) As used in this section, "unverified complaint" means a  
21 complaint filed by a person in which agricultural activity on a farm is  
22 alleged to have violated specified laws, rules, or ordinances and upon  
23 investigation the investigating agency or a court determines that the  
24 farm is in conformity with the specified laws, rules, or ordinances  
25 allegedly violated and the complaint was unfounded at the time it was  
26 initiated.

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

29 A seller of real property located within one mile of the property

1 boundary of a farm or farm operation shall make available to the buyer  
2 the following statement: "This notice is to inform prospective  
3 residents that the real property they are about to acquire lies within  
4 one mile of the property boundary of a farm. The farm may generate  
5 usual and ordinary noise, dust, odors, and other associated conditions,  
6 and these practices are protected by the Washington right to farm act."

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

9 (1) Odors or fugitive dust caused by agricultural activity  
10 consistent with good agricultural practices on agricultural land are  
11 exempt from the requirements of this chapter unless they have a  
12 substantial adverse effect on public health. In determining whether  
13 agricultural activity is consistent with good agricultural practices,  
14 the department of ecology or board of any authority shall consult with  
15 a recognized third-party expert in the activity prior to issuing any  
16 notice of violation.

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

22 (3) In any appeal to the pollution control hearings board or any  
23 judicial appeal, the agency issuing a final order pertaining to odors  
24 or fugitive dust caused by agricultural activity shall prove the  
25 activity is inconsistent with good agricultural practices or that the  
26 odors or fugitive dust have a substantial adverse impact on public  
27 health.

28 (4) If a person engaged in agricultural activity on a contiguous  
29 piece of agricultural land sells or has sold a portion of that land for  
30 residential purposes, the exemption of this section shall not apply.

31 (5) As used in this section:

32 (a) "Agricultural activity" means the growing, raising, or  
33 production of horticultural or viticultural crops, berries, poultry,  
34 livestock, grain, mint, hay, and dairy products.

35 (b) "Good agricultural practices" means economically feasible  
36 practices which are customary among or appropriate to farms and ranches  
37 of a similar nature in the local area.

1 (c) "Agricultural land" means at least five acres of land devoted  
2 primarily to the commercial production of livestock or agricultural  
3 commodities.

4 (d) "Fugitive dust" means a particulate emission made airborne by  
5 human activity, forces of wind, or both, and which do not pass through  
6 a stack, chimney, vent, or other functionally equivalent opening.

7 (6) The exemption for fugitive dust provided in subsection (1) of  
8 this section does not apply to facilities subject to RCW 70.94.151 as  
9 specified in WAC 173-400-100 as of the effective date of this act,  
10 70.94.152, or 70.94.161."

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11 On page 1, line 1 of the title, after "practices;" strike the  
12 remainder of the title and insert "amending RCW 70.94.640; adding a new  
13 section to chapter 7.48 RCW; and adding a new section to chapter 64.06  
14 RCW."

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