

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5962

Chapter 511, Laws of 2005

59th Legislature
2005 Regular Session

AGRICULTURAL ACTIVITIES--NUISANCE CLAIMS--NOTICE

EFFECTIVE DATE: 7/24/05

Passed by the Senate April 19, 2005
YEAS 38 NAYS 6

BRAD OWEN

President of the Senate

Passed by the House April 14, 2005
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 17, 2005.

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5962** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 17, 2005 - 2:23 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5962

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington **59th Legislature** **2005 Regular Session**

By Senators Haugen, Schoesler, Rasmussen, Morton, Shin and Delvin

Read first time 02/16/2005. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to customary agricultural practices; amending RCW
2 70.94.640; adding new sections to chapter 7.48 RCW; and adding a new
3 section to chapter 64.06 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.48 RCW
6 to read as follows:

7 (1) A farmer who prevails in any action, claim, or counterclaim
8 alleging that agricultural activity on a farm constitutes a nuisance
9 may recover the full costs and expenses determined by a court to have
10 been reasonably incurred by the farmer as a result of the action,
11 claim, or counterclaim.

12 (2) A farmer who prevails in any action, claim, or counterclaim (a)
13 based on an allegation that agricultural activity on a farm is in
14 violation of specified laws, rules, or ordinances, (b) where such
15 activity is not found to be in violation of the specified laws, rules,
16 or ordinances, and (c) actual damages are realized by the farm as a
17 result of the action, claim, or counterclaim, may recover the full
18 costs and expenses determined by a court to have been reasonably

1 incurred by the farmer as a result of the action, claim, or
2 counterclaim.

3 (3) The costs and expenses that may be recovered according to
4 subsection (1) or (2) of this section include actual damages and
5 reasonable attorneys' fees and costs. For the purposes of this
6 subsection, "actual damages" include lost revenue and the replacement
7 value of crops or livestock damaged or unable to be harvested or sold
8 as a result of the action, claim, or counterclaim.

9 (4) In addition to any sums recovered according to subsection (1)
10 or (2) of this section, a farmer may recover exemplary damages if a
11 court finds that the action, claim, or counterclaim was initiated
12 maliciously and without probable cause.

13 (5) A farmer may not recover the costs and expenses authorized in
14 this section from a state or local agency that investigates or pursues
15 an enforcement action pursuant to an allegation as specified in
16 subsection (2) of this section.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.48 RCW
18 to read as follows:

19 A state or local agency required to investigate a complaint
20 alleging agricultural activity on a farm is in violation of specified
21 laws, rules, or ordinances and where such activity is not found to be
22 in violation of such specified laws, rules, or ordinances may recover
23 its full investigative costs and expenses if a court determines that
24 the complaint was initiated maliciously and without probable cause.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 64.06 RCW
26 to read as follows:

27 A seller of real property located within one mile of the property
28 boundary of a farm or farm operation shall make available to the buyer
29 the following statement: "This notice is to inform prospective
30 residents that the real property they are about to acquire lies within
31 one mile of the property boundary of a farm. The farm may generate
32 usual and ordinary noise, dust, odors, and other associated conditions,
33 and these practices are protected by the Washington right to farm act."

34 **Sec. 4.** RCW 70.94.640 and 1981 c 297 s 30 are each amended to read
35 as follows:

1 (1) Odors or fugitive dust caused by agricultural activity
2 consistent with good agricultural practices on agricultural land are
3 exempt from the requirements of this chapter unless they have a
4 substantial adverse effect on public health. In determining whether
5 agricultural activity is consistent with good agricultural practices,
6 the department of ecology or board of any authority shall consult with
7 a recognized third-party expert in the activity prior to issuing any
8 notice of violation.

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

14 (3) In any appeal to the pollution control hearings board or any
15 judicial appeal, the agency issuing a final order pertaining to odors
16 or fugitive dust caused by agricultural activity shall prove the
17 activity is inconsistent with good agricultural practices or that the
18 odors or fugitive dust have a substantial adverse impact on public
19 health.

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

23 (5) As used in this section:

24 (a) "Agricultural activity" means the growing, raising, or
25 production of horticultural or viticultural crops, berries, poultry,
26 livestock, shellfish, grain, mint, hay, and dairy products.

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

30 (c) "Agricultural land" means at least five acres of land devoted
31 primarily to the commercial production of livestock ~~((or))~~,
32 agricultural commodities, or cultured aquatic products.

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

36 (6) The exemption for fugitive dust provided in subsection (1) of
37 this section does not apply to facilities subject to RCW 70.94.151 as

1 specified in WAC 173-400-100 as of the effective date of this act,
2 70.94.152, or 70.94.161.

Passed by the Senate April 19, 2005.

Passed by the House April 14, 2005.

Approved by the Governor May 17, 2005.

Filed in Office of Secretary of State May 17, 2005.