

Sec. 12.110. - Nuisances.

(a) *Definition:*

- (1) A *nuisance* occurs on property when the person who owns or rents the property:
 - (i) Maintains the property in a condition that poses an actual or potential threat to health;
 - (ii) Allows activities to take place on the property which pose an actual or potential threat to health; or
 - (iii) Allows activities to take place on the property which interfere with another's proper use or enjoyment of property.
- (2) A nuisance includes water pollution, contaminated wells, open and abandoned wells, overflowing sewage, infestation with insects, vermin or rodents, unclean facilities for domestic animals and poultry, air pollution, improper refuse disposal, a hazard caused by the presence of lead paint or lead paint dust, or violations of food establishment regulations adopted pursuant to this subtitle.

(b) *Complaints:*

- (1) A person who claims to be affected by a nuisance may complain to the Board of Health or the Health Department to declare that a nuisance exists.
- (2) On the written complaint of at least two persons who claim to be affected by a nuisance condition regarding an agricultural operation, the Health Officer shall investigate any complaint that a nuisance condition exists.

(c) *Investigations:*

- (1) Except as provided in subsection (b)(2) of this section, on receipt of a complaint by at least two persons who claim to be affected by a nuisance, the Health Officer shall investigate the complaint.
- (2) The Health Officer shall investigate all complaints of nuisance received except for nuisance complaints against an agricultural operation when a previous nuisance complaint involving the same claimed nuisance condition resulted in a determination by the Health Officer that a nuisance condition did not exist. The Health Officer may initiate an investigation without requiring citizen complaint.

- (d) *Declaration of Nuisance.* If the Health Officer believes that a nuisance condition exists as defined in subsection (a) above, the Health Officer may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an agricultural operation, as defined in this subtitle, the Health Officer shall apply the criteria provided in

subsection 12.110(a) and subsection 12.111(d) of this subtitle. Further, the Health Officer may consider the professional opinion of the Howard County Cooperative Extension Service of the University of Maryland in determining whether the agricultural operation being investigated is conducted in accordance with generally accepted agricultural management practices.

- (e) *Notice of Violation; Citations.* Upon finding that a nuisance exists, the Health Officer may:
- (1) Give written notice of the violation to the person owning and/or renting the property stating that a nuisance exists, describing the nuisance, ordering the nuisance to be corrected within the time specified in the notice, and stating the right to appeal; or
 - (2) Issue a civil citation to the person owning and/or renting the property.
- (f) *Appeal.* The decision of the Health Officer whether or not to issue an order to correct a nuisance may be appealed to the Board of Health. Any person aggrieved by the decision who wishes to appeal it shall file an appeal with the Executive Secretary of the Board of Health within 15 days of the decision. The Board of Health shall schedule a hearing within ten days of the filing of the appeal and shall issue its decision within 15 days of the hearing.

(C.B. 6, 1985; C.B. 32, 1985; C.B. 22, 1989; C.B. 15, 1996)

State Law reference— General power relative to nuisances, Ann. Code of Md. art. 25A, § 5(J); nuisance control, Ann. Code of Md., Environment article, § 10-101 et seq.

Sec. 12.111. - Nuisance suits against agricultural operations.

- (a) *Short Title.* This section shall be known and may be cited as the Howard County Right-To-Farm Act, Bill No. 22, 1989.
- (b) *Public Policy.* The practice of agriculture has been a mainstay of the economy of Howard County since the land was settled. It is a valued and respected way of life, and the preferred land use in the Rural Conservation (RC) Zoning District, a valued land use in the Rural Residential (RR) Zoning District and on property that has an agricultural use assessment as determined by the State Department of Assessments and Taxation. The Howard County Council hereby finds and declares that the practice of farming in Howard County should be protected and encouraged.
- (c) *Definitions.* In this section agricultural operation includes agriculture, apiaries, horticulture, orchards, agricultural nurseries, viticulture, aquaculture, silviculture, animal and poultry husbandry, and farming as defined in the Howard County Zoning Regulations. An agricultural operation may occur without limitation as to hours of operation. The harvesting and

processing of agricultural crops and other uses or structures directly related to or accessory to the premises for farming are considered part of an agricultural operation. Agricultural practices included as part of an agricultural operation include, but are not limited to:

- (1) The transportation of agricultural products;
- (2) The transportation, storage, handling, and application of fertilizer, soil amendments, pesticides, and manure; and
- (3) The operation of agricultural machinery and equipment.

(d) *Protection for Agricultural Operations.* In RC and RR zoning districts, and on property that has an agricultural use assessment as determined by the State Department of Assessments and Taxation, an agricultural operation may not legally be considered a public or private nuisance; and a private action may not be sustained on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of other property, whether public or private, if:

- (1) The agricultural operation existed before a change occurred in the adjoining land use or occupancy of land and, before such change in land use or occupancy of land, the agricultural operation did not constitute a nuisance; or
- (2) The agricultural operation, including any change in the operation, has been ongoing for one year or more and the operation or change did not constitute a nuisance from the date the operation began or the date the change in the operation began; and
- (3) The agricultural operation is conducted in accordance with generally accepted agricultural management practices.

(e) *Exceptions.* This section does not apply to:

- (1) An agricultural operation that does not conform to Federal, State or local health or zoning requirements;
- (2) A Federal, State or local agency when enforcing air, water quality, or other environmental standards under Federal, State or local law; or
- (3) An agricultural operation that is conducted in a negligent manner.

(f) *Limitations of Actions.* Notwithstanding any provision of this section, no action alleging that an agricultural operation conducted in accordance with generally accepted agricultural practices has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought mediation through the Maryland

Agricultural Conflict Resolution Service within the Maryland Department of Agriculture, as provided for in Title 5, Subtitle 4 of the Courts and Judicial Proceedings article of the Annotated Code of Maryland.

- (g) *Legal Actions in Bad Faith or without Substantial Justification.* In any civil action, if a court finds that the conduct of a plaintiff in maintaining a nuisance case against the owner of an agricultural operation was in bad faith or without substantial justification, the court may require the plaintiff to pay to the owner of the agricultural operation the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the owner of the agricultural operation in defending against the legal action.

(C.B. 22, 1989; C.B. 41, 1993; C.B. 10, 2013, § 1)

State Law reference— Right to farm, Ann. Code of Md. art. 24, § 18-101.