

(2) This section does not apply to any agricultural operation that is operating without a fully and demonstrably implemented nutrient management plan for nitrogen and phosphorus if otherwise required by law.

(c) If an agricultural operation has been under way for a period of 1 year or more and if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and is not conducted in a negligent manner:

(1) The operation, including any noise, odors, dust, or insects from the operation, may not be deemed to be a public or private nuisance; and

(2) A private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property, whether public or private.

(d) (1) This section does not create, and may not be construed as creating, a new cause of action or substantive legal right against a person who is engaged in an agricultural operation.

(2) This section does not affect, and may not be construed as affecting, any defenses available at common law to a defendant who is engaged in an agricultural operation and subject to an action for nuisance.

(E) (1) THIS SUBSECTION DOES NOT APPLY TO AN ACTION BROUGHT BY A GOVERNMENT AGENCY.

(2) IF A LOCAL AGENCY IS AUTHORIZED TO HEAR A NUISANCE COMPLAINT AGAINST AN AGRICULTURAL OPERATION, A PERSON MAY NOT BRING A NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION IN ANY COURT UNTIL:

(I) THE PERSON HAS FILED A COMPLAINT WITH THE LOCAL AGENCY; AND

(II) THE LOCAL AGENCY HAS MADE A DECISION OR RECOMMENDATION ON THE COMPLAINT.

(3) IF THERE IS NO LOCAL AGENCY AUTHORIZED TO HEAR A NUISANCE COMPLAINT AGAINST AN AGRICULTURAL OPERATION, A PERSON MAY NOT BRING A NUISANCE ACTION AGAINST AN AGRICULTURAL OPERATION IN ANY COURT UNTIL:

(I) THE PERSON HAS REFERRED A COMPLAINT TO THE STATE AGRICULTURAL MEDIATION PROGRAM IN THE DEPARTMENT OF AGRICULTURE UNDER TITLE 1, SUBTITLE 1A OF THE AGRICULTURE ARTICLE; AND

(II) THE DEPARTMENT CERTIFIES THAT MEDIATION HAS BEEN CONCLUDED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006.

Approved April 25, 2006.