

HOUSE BILL NO. 1430

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources

on _____)

(Patrons Prior to Substitute--Delegates Lingamfelter and Bell, Robert B.)

A BILL to amend and reenact § 3.2-300 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 3.2 a section numbered 3.2-302.1, relating to the Right to Farm Act.

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-300 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 3.2 a section numbered 3.2-302.1 as follows:

§ 3.2-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, ~~or~~ animals, or fowl, including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; herbs, nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity and their byproducts. "Agricultural operation" includes the commerce of farm-to-business and farm-to-consumer sales. For purposes of this chapter, the commerce and sale of certain items at, from, or by an agricultural or silvicultural operation, including food, beverages, furniture, or other items that are related to or consistent with such agricultural or silvicultural operation, shall be deemed part of the agricultural operation.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

§ 3.2-302.1. Rebuttable presumption of right to farm; remedies.

A. The engagement in agricultural operations on property zoned agricultural in a locality where such zoning exists, or on unzoned property in a locality where no zoning ordinance has been adopted,

27 shall create a rebuttable presumption that an operation is in compliance with local zoning ordinances.
28 The rebuttable presumption shall not be overcome by hearsay evidence or without an onsite inspection
29 performed in compliance with the strictest standards under the Fourth Amendment to the United States
30 Constitution, which requires that no warrants shall issue without probable cause supported by oath or
31 affirmation.

32 B. A locality that violates this chapter shall be liable to the agricultural operation for (1) the
33 amount of fines, if any, that the locality sought to impose on the operation in violation of this chapter,
34 and (2) attorney fees incurred by the operation in defending against the action of the locality or seeking
35 to enforce the provisions of this chapter. A local ordinance that violates any provision of this chapter or
36 any right protected under the Constitution of Virginia or the Constitution of the United States is void.

37 **2. That by December 1, 2013, the Secretary of Agriculture shall direct the development of one or**
38 **more model local ordinances concerning the implementation of the Right to Farm Act (§ 3.2-300 et**
39 **seq. of the Code of Virginia) and shall provide a report containing the model ordinances and**
40 **evaluating the implications and relative merits of such ordinances to the House Committee on**
41 **Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture,**
42 **Conservation and Natural Resources for their review and consideration. The model ordinances**
43 **shall:**

44 **a. Be designed to ensure that the right to farm is protected from actions that would**
45 **obstruct or unreasonably constrain persons, property, or activity on land zoned agricultural or**
46 **silvicultural;**

47 **b. Provide that the term "agricultural operation" includes any operation devoted to the**
48 **bona fide production of crops, animals, or fowl, including the production of fruits and vegetables**
49 **of all kinds; meat, dairy, and poultry products; herbs, nuts, tobacco, nursery, and floral products;**
50 **and the production and harvest of products from silviculture activity and their byproducts;**

51 **c. Include the right to conduct farm-to-consumer and farm-to-business sales;**

52 **d. State any limit on the proportion of the total production or revenues of the agricultural**
53 **operation that farm-to-consumer or farm-to-business sales shall occupy; and**

54 e. Provide suitable remedies against any government activity that unreasonably interferes
55 with the right to farm.

56 #