

Amendment No. 3 to SB2135

**Fowler
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Comm. Amdt. _____

AMEND Senate Bill No. 2135*

House Bill No. 2351

By deleting Section 1 in its entirety and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 43-26-103, is amended by deleting all of the current language in its entirety and substituting instead the following:

(a) It is a rebuttable presumption that a farm or farm operation, except a new farming operation as described in subsection (b), is not a public or private nuisance. The presumption created by this subsection may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that (1) the farm operation, based on expert testimony, does not conform to generally accepted agricultural practices, or (2) the farm or farm operation does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation.

(b) With regard to the initiation of a new farming operation, there is a rebuttable presumption that such new farm operation is not a public or private nuisance, if the boundaries encompassing the new farming operation is located one (1) mile or more from the nearest property line of the person alleging a nuisance. The presumption created by this subsection may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that (1) the new farm operation, based on expert testimony, does not conform to generally accepted agricultural practices, or (2) the new farm operation does not comply with any applicable statute or regulation, including without limitation statutes and regulations administered by the department of agriculture or the department of environment and conservation.

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As used in this subsection, "new farm operation" means a farm operation that is both (1) initiated on property that, for the two (2) years preceding initiation of the new farm operation, was not actively used in the production of food, fiber or livestock, and (2) initiated subsequent to the date that the person alleging nuisance became the owner or lessee of the land, with respect to which a nuisance is alleged. A cause of action for nuisance arising out of a new farm operation shall not accrue until the person alleging nuisance knows or reasonably should have known of the nuisance, regardless of when the new farm operation was found to be initiated for the purpose of the preceding provision. "New farming operation" does not include expansion of facilities or change in type of an existing farming operation.