

**CHAPTER NO. 604**

**SENATE BILL NO. 2135**

**By Haun, Crowe, Ramsey, Miller, Williams, McNally, Carter, Burks, Jackson, Norris,  
Davis**

**Substituted for: House Bill No. 2351**

**By Givens, Baird, Bone, Windle, Fraley, Newton, Montgomery, Johnson, Sargent,  
Pinion, Walker, Mumpower, David Davis, Sands, Curtiss, Ford, McKee, Roach,  
Hagood, Overbey, John DeBerry, White, Boyer, Godsey, Bittle, Davidson, Maddox,  
McDonald, Kisber, McDaniel, Goins, Ralph Cole, Kent, Tidwell, Brenda Turner,  
Fitzhugh, Shepard, Ridgeway, Vincent, Mr. Speaker Naifeh**

AN ACT To amend Tennessee Code Annotated, Title 43, Chapter 26, Part 1, relative to the right to farm.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

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

Section 43-26-103. (a) It is a rebuttable presumption that a farm or farm operation, except a new type of 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 preponderance of the evidence that either:

(1) the farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or,

(2) the farm or farm operation alleged to cause the nuisance 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 type of farming operation, there is a rebuttable presumption that such new type of farm operation is not a public or private nuisance, if the new type of farming operation exists for one (1) year or more on the land that is the subject of an action for nuisance before such action is initiated. 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 either:

(1) the new type of farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or,

(2) the new type of farm operation alleged to cause the nuisance 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.

(c) As used in this section, "new type of farming operation" means a farm operation that is materially different in character and nature from previous farming operations and that is initiated subsequent to the date that the person alleging nuisance became the owner or lessee of the land, the use or enjoyment of which is alleged to be affected by the farming operation; "new type of farming operation" does not include the expansion or addition of facilities for a type of farming operation that existed on the land that is the subject of an action for nuisance prior to the date that the person alleging nuisance became the owner or lessee of the land, the use or enjoyment of which is alleged to be affected by the farming operation.

(d) Nothing in this section shall be construed as limiting the ability of the trier of fact to determine whether a particular farming activity is either a new type of farming operation as defined in this section, or is an expansion of or addition to an existing type of farming operation.

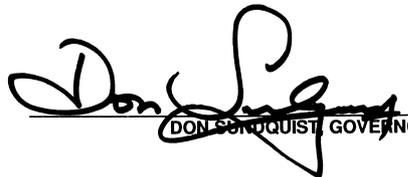
SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: April 3, 2002**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 16<sup>th</sup> day of April 2002**

  
DON SPANG, GOVERNOR