

352.11 Incentives for agricultural land preservation payment of costs and fees in nuisance actions.

1. Nuisance restriction.

a. A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation. This paragraph shall apply to a farm operation conducted within an agricultural area for six years following the exclusion of land within an agricultural area other than by withdrawal as provided in section 352.9.

b. Paragraph "*a*" does not apply to a nuisance which is the result of a farm operation determined to be in violation of a federal statute or regulation or state statute or rule. Paragraph "*a*" does not apply if the nuisance results from the negligent operation of the farm or farm operation. Paragraph "*a*" does not apply to actions or proceedings arising from injury or damage to a person or property caused by the farm or a farm operation before the creation of the agricultural area. Paragraph "*a*" does not affect or defeat the right of a person to recover damages for an injury or damage sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land, unless the injury or damage is caused by an act of God.

c. A person shall not bring an action or proceeding based on a claim of nuisance arising from a farm operation unless the person proceeds with mediation as provided in chapter 654B.

d. If a defendant is a prevailing party in an action or proceeding based on a claim of nuisance and arising from a farm operation conducted on farmland within an agricultural area, the plaintiff shall pay court costs and reasonable attorney fees incurred by the defendant, if the court determines that the claim is frivolous.

2. Water priority. In the application for a permit to divert, store, or withdraw water and in the allocation of available water resources under a water permit system, the department of natural resources shall give priority to the use of water resources by a farm or farm operation, exclusive of irrigation, located in an agricultural area over all other uses except the competing uses of water for ordinary household purposes.

[82 Acts, ch 1245, § 12]

C83, § 93A.11

83 Acts, ch 101, § 7; 83 Acts, ch 137, § 27

C87, § 176B.11

C93, § 352.11

93 Acts, ch 146, § 7

Footnotes

Nuisances in general, chapter 657