

413.072 Relationship of agricultural and silvicultural operations to law of nuisance and trespass -- Preemption of local ordinances -- Sustainable agriculture and best management practices.

- (1) It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land and silvicultural land for the production of food, timber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural and silvicultural areas, agricultural and silvicultural operations often become the subject of nuisance suits or legal actions restricting agricultural or silvicultural operations. As a result, agricultural and silvicultural operations are sometimes either curtailed or forced to cease operations. Investments in farm and timber improvements may be discouraged. It is the purpose of this section to reduce the loss to the state of its agricultural and silvicultural resources by clarifying the circumstances under which agricultural and silvicultural operations may be deemed to be a nuisance or interfered with by local ordinances or legal actions.
- (2) No agricultural or silvicultural operation or any of its appurtenances shall be or become a nuisance or trespass, private or public, or be in violation of any zoning ordinance, or be subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices, by any changed conditions in or about the locality thereof after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began. The provisions of this subsection shall not apply whenever a nuisance, trespass, or zoning violation results from the negligent operation of an agricultural or silvicultural operation or its appurtenances.
- (3)
 - (a) For the purposes of this section, "agricultural operation" includes, but is not limited to, any facility for the production of crops, livestock, equine, poultry, livestock products, poultry products, horticultural products, and any generally accepted, reasonable, and prudent method for the operation of a farm to obtain a monetary profit that complies with applicable laws and administrative regulations, and is performed in a reasonable and prudent manner customary among farm operators. Agricultural practices protected by this section shall include, but not be limited to, fertilizer application, the application of pesticides or herbicides that have been approved by public authority, planting, cultivating, mowing, harvesting, land clearing, and constructing farm buildings, roads, lakes, and ponds associated with a farming operation.
 - (b)
 1. An agricultural operation may include the practice of sustainable agriculture.
 2. For purposes of this section, "sustainable agriculture" includes science-based practices that:
 - a. Are supported by research and the use of technology;
 - b. Are demonstrated to lead to broad outcomes-based performance improvements that meet the needs of the present; and

- c. Improve the ability of future generations to meet their needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities.
 3. Sustainable agriculture may use continuous improvement principles, with goals that include:
 - a. Increasing agricultural productivity;
 - b. Improving human health through access to safe, nutritious, and affordable food; and
 - c. Enhancing agricultural and surrounding environments, including water, soil, and air quality, biodiversity, and habitat preservation.
- (4) For the purposes of this section, "silvicultural operation" includes timber harvest, site preparation, slash disposal including controlled burning, tree planting, precommercial thinning, release, fertilization, animal damage control, reasonable water resource management, insect and disease control in forest land, and any other generally accepted, reasonable, and prudent practice normally employed in the management of the timber resource for monetary profit. A silvicultural operation inherently includes lengthy periods between harvests and shall be deemed continuously operating so long as the property supports an actual or developing forest.
- (5) An agricultural or silvicultural operation shall not lose its status by reason of a change of ownership or a cessation of operation of no more than five (5) years or one (1) year after the expiration of a state or national program contract, either in whole or in part, nor shall it lose its status by reason of changes of crops or methods of production due to the introduction and use of new and generally accepted technologies which allow the operator to continue an existing agricultural or silvicultural corporation, unless the operation is substantially changed.
- (6) The provisions of this section shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream or ground water of the person, firm, or corporation.
- (7) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make an agricultural or silvicultural operation or its appurtenances a nuisance per se, or providing for abatement thereof as a nuisance, a trespass, or a zoning violation in the circumstance set forth in this section shall be void. However, the provisions of this subsection shall not apply whenever a nuisance results from the negligent operation of any such agricultural operation or any of its appurtenances.
- (8) Any administrative regulation promulgated by any agency that establishes standards for harvesting or producing agricultural crops in a sustainable manner shall be based on the principles outlined in this section and shall allow the use of best management practices developed under KRS 224.71-100 to 224.71-140.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 100, sec. 1, effective July 15, 2010. -- Amended 1996 Ky. Acts ch. 91, sec. 1, effective July 15, 1996. -- Created 1980 Ky. Acts ch. 214, sec. 1, effective July 15, 1980.

Legislative Research Commission Note (7/15/2010). Under the authority of KRS 7.136(1), the Reviser of Statutes has inserted subparagraph and subdivision designations into subsection (3)(b) of this statute during codification. The meaning of the text was not changed.