

House Bill 1150 (AS PASSED HOUSE AND SENATE)

By: Representatives Dickey of the 140th, Watson of the 172nd, England of the 116th, Jasperse of the 11th, Pirkle of the 155th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to
2 treatment of agricultural facilities and operations and forest land as nuisances, so as to
3 provide for legislative intent; to provide for and remove definitions; to limit the
4 circumstances under which agricultural facilities and operations may be sued for a nuisance;
5 to provide for a short title; to provide for related matters; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Freedom to Farm Act."

10 **SECTION 2.**

11 Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to treatment of
12 agricultural facilities and operations and forest land as nuisances, is amended as follows:

13 "41-1-7.

14 (a) It is the declared policy of the state to conserve, protect, and encourage the
15 development and improvement of its agricultural and forest land and facilities for the

16 production or distribution of food and other agricultural products, including without
17 limitation forest products. When nonagricultural land uses extend into agricultural or
18 agriculture-supporting industrial or commercial areas or forest land or when there are
19 changed conditions in or around the locality of an agricultural facility or agricultural
20 support facility, such operations often become the subject of nuisance actions. As a result,
21 such facilities are sometimes forced to cease operations. Many others are discouraged from
22 making investments in agricultural support facilities or farm improvements or adopting
23 new related technology or methods. It is the purpose of this Code section to reduce losses
24 of the state's agricultural and forest land resources by limiting the circumstances under
25 which agricultural facilities and operations or agricultural support facilities may be deemed
26 to be a nuisance.

27 (b) As used in this Code section, the term:

28 ~~(1) 'Agricultural area' means any land which is, or may be, legally used for an~~
29 ~~agricultural operation under applicable zoning laws, rules, and regulations at the time of~~
30 ~~commencement of the agricultural operation of the agricultural facility at issue and~~
31 ~~throughout the first year of operation of such agricultural facility. Any land which is not~~
32 ~~subject to zoning laws, rules, and regulations at the time of commencement of an~~
33 ~~agricultural operation of an agricultural facility and throughout the first year of operation~~
34 ~~of such agricultural facility shall be deemed an 'agricultural area' for purposes of this~~
35 ~~Code section.~~

36 ~~(2)~~ 'Agricultural facility' includes, but is not limited to, any land, building, structure,
37 pond, impoundment, appurtenance, machinery, or equipment which is used for the
38 commercial production or processing of crops, livestock, animals, poultry, honeybees,
39 honeybee products, livestock products, poultry products, timber, forest products, or
40 products which are used in commercial aquaculture. Such term shall also include any
41 farm labor camp or facilities for migrant farm workers.

42 ~~(3)~~(2) 'Agricultural operation' means:

- 43 (A) The plowing, tilling, or preparation of soil at an agricultural facility;
- 44 (B) The planting, growing, fertilizing, harvesting, or otherwise maintaining of crops
45 as defined in Code Section 1-3-3 and also timber and trees that are grown for purposes
46 other than for harvest and for sale;
- 47 (C) The application of pesticides, herbicides, or other chemicals, compounds, or
48 substances to crops, weeds, or soil in connection with the production of crops, timber,
49 livestock, animals, or poultry;
- 50 (D) The breeding, hatching, raising, producing, feeding, keeping, slaughtering, or
51 processing of livestock, hogs, equines, chickens, turkeys, poultry or other fowl
52 normally raised for food, mules, cattle, sheep, goats, dogs, rabbits, or similar farm
53 animals for commercial purposes;
- 54 (E) The production and keeping of honeybees, the production of honeybee products,
55 and honeybee processing facilities;
- 56 (F) The production, processing, or packaging of eggs or egg products;
- 57 (G) The manufacturing of feed for poultry or livestock;
- 58 (H) The rotation of crops, including without limitation timber production;
- 59 (I) Commercial aquaculture;
- 60 (J) The application of existing, changed, or new technology, practices, processes, or
61 procedures to any agricultural operation; and
- 62 (K) The operation of any roadside market.

63 ~~(3.1)~~(3) 'Agricultural support facility' means any food processing plant or forest products
64 processing plant together with all related or ancillary activities, including trucking;
65 provided, however, that this term expressly excludes any rendering plant facility or
66 operation.

67 (4) ~~'Changed conditions' means any one or more of the following:~~

- 68 ~~(A) Any change in the use of land in an agricultural area or in an industrial or~~
69 ~~commercial area affecting an agricultural support facility;~~

70 ~~(B) An increase in the magnitude of an existing use of land in or around the locality of~~
 71 ~~an agricultural facility or agricultural support facility and includes, but is not limited to,~~
 72 ~~urban sprawl into an agricultural area or into an industrial or commercial area in or~~
 73 ~~around the locality of such facility, or an increase in the number of persons making any~~
 74 ~~such use, or an increase in the frequency of such use; or~~

75 ~~(C) The construction or location of improvements on land in or around the locality of~~
 76 ~~an agricultural facility or agricultural support facility closer to such facility than those~~
 77 ~~improvements located on such land at the time of commencement of the agricultural or~~
 78 ~~agricultural support operation or the agricultural facility or agricultural support facility~~
 79 ~~at issue and throughout the first year of operation of said facility. 'Concentrated Animal~~
 80 ~~Feeding Operation,' or 'CAFO,' means the same as that term is used pursuant to~~
 81 ~~subsections (b) and (c) of 40 C.F.R. Section 122.23.~~

82 ~~(4.1)(5)~~ 'Food processing plant' means a commercial operation that manufactures,
 83 packages, labels, distributes, or stores food for human consumption and does not provide
 84 food directly to a consumer.

85 ~~(4.2)(6)~~ 'Forest products processing plant' means a commercial operation that
 86 manufactures, packages, labels, distributes, or stores any forest product or that
 87 manufactures, packages, labels, distributes, or stores any building material made from
 88 gypsum rock.

89 ~~(4.3)(7)~~ 'Rendering plant' has the meaning provided by Code Section 4-4-40.

90 ~~(5) 'Urban sprawl' means either of the following or both:~~

91 ~~(A) With regard to an agricultural area or agricultural operation:~~

92 ~~(i) The conversion of agricultural areas from traditional agricultural use to residential~~
 93 ~~use; or~~

94 ~~(ii) An increase in the number of residences in an agricultural area which increase is~~
 95 ~~unrelated to the use of the agricultural area for traditional agricultural purposes.~~

96 ~~(B) With regard to an agricultural support facility:~~

- 97 ~~(i) The conversion of industrial or commercial areas to residential use; or~~
98 ~~(ii) An increase in the number of residences in an industrial or commercial area~~
99 ~~which increase is unrelated to the use of the industrial or commercial area for~~
100 ~~traditional industrial or commercial purposes.~~
- 101 (c) No private nuisance action shall be filed against any agricultural facility, agricultural
102 operation, any agricultural operation at an agricultural facility, agricultural support facility,
103 or any operation at an agricultural support facility unless the plaintiff legally possesses the
104 real property affected by the conditions alleged to be a nuisance.
- 105 (d) No agricultural facility, agricultural operation, any agricultural operation at an
106 agricultural facility, agricultural support facility, or any operation at an agricultural support
107 facility shall be or shall become a nuisance, either public or private, as a result of changed
108 conditions in or around the locality of such facility or operation if the facility or operation
109 has been in operation for one year two years or more. The provisions of this subsection
110 shall not apply when a nuisance results from the negligent, improper, or illegal operation
111 of any such facility or operation.
- 112 ~~(d)~~(e) For purposes of this Code section, the established date of operation is the date on
113 which an agricultural operation or agricultural support facility commenced operation. If
114 the physical facilities of the agricultural operation or the agricultural support facility are
115 subsequently expanded or new technology adopted, the established date of operation for
116 each change is not a separately and independently established date of operation and the
117 commencement of the expanded operation does not divest the agricultural operation or
118 agricultural support facility of a previously established date of operation.
- 119 (f) For purposes of this Code section, the commencement of operation of a CAFO shall
120 create a separately and independently established date of operation for that portion of the
121 agricultural facility, agricultural operation, any agricultural operation at an agricultural
122 facility, agricultural support facility, or any operation at an agricultural support facility
123 relating to the newly established CAFO.

124 (g) Nothing in this Code section shall preempt or override any present or future rule or
125 regulation of the Georgia Environmental Protection Division or the United States
126 Environmental Protection Agency."

127 **SECTION 3.**

128 All laws and parts of laws in conflict with this Act are repealed.