

1 SB61
2 115334-3
3 By Senator Benefield
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 12-JAN-10
6 PFD: 12/17/2009

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To enact the Alabama Family Farm Preservation Act,
12 to provide that farm operations, if operated lawfully under
13 certain conditions, may not be characterized as public or
14 private nuisances or be determined to be in violation of a
15 municipal or county ordinance.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. (a) This act shall be known and may be
18 cited as "The Alabama Family Farm Preservation Act."

19 (b) The Legislature recognizes the importance of the
20 family farm in Alabama. It is the intent of the Legislature to
21 assist in the preservation of family farms in Alabama by
22 assuring that lawfully conducted farms and farm operations
23 will not be considered to be public or private nuisances when
24 and so long as they are operated in conformance with generally
25 accepted agricultural and farm management practices, as
26 described herein. The Legislature further recognizes that

1 family farms may incorporate to take advantage of those
2 provisions of law not afforded to other corporations.

3 Section 2. For the purposes of this act, the
4 following words and phrases shall have the following
5 respective meanings:

6 (1) FARM. The land, including ponds, buildings,
7 support facilities, machinery, equipment, tractors,
8 implements, and other appurtenances used by the owner or
9 operator thereof in the production of farm products, with
10 respect to which there has been issued a farm serial number by
11 the Farm Services Agency or which comports with the definition
12 of a farm under 7 Code of Federal Regulations 718.2, or any
13 subsequent regulation of similar import.

14 (2) FARM OPERATION. Any condition existing on a farm
15 or activity taking place on a farm pursuant to the instigation
16 or direction of the owner or operator of the farm, including
17 in the latter case, the owner's lessee, agent, or independent
18 contractor, or of a supplier of goods or services, which
19 condition or activity occurs, exists, or is supplied on a farm
20 in connection with the production of farm products and
21 includes, but is not limited to: The marketing of produce at
22 roadside stands or farm markets; the operation of machinery,
23 tractors, implements, and irrigation pumps in the production
24 of farm products; the generation of noise, odors, dust, and
25 fumes in the production of farm products; the plowing of farm
26 land and the harvesting and the planting of trees or crops;
27 the irrigation and ground or aerial seeding and spraying of

1 farm and silvicultural products; the disposal of manure; the
2 application of chemical fertilizers and amendments,
3 conditioners, insecticides, pesticides, and herbicides; and
4 the employment and use of labor in the production of farm and
5 silvicultural products; provided, however, that such term
6 shall not include or cover any condition existing or
7 activities taking place on a public road or anywhere else
8 other than on a farm as defined herein.

9 (3) FARM PRODUCTS. Any plants, fish, or animals
10 useful, or intended to be consumed or used by humans or other
11 animals and plants, and includes, but is not limited to,
12 forages and sod crops, grains and food crops, dairy products,
13 poultry and poultry products, bees, livestock and livestock
14 products, trees and silvicultural products, and fruits,
15 berries, vegetables, flowers, seeds, grasses, and other
16 similar products, as well as any product derived therefrom.

17 Section 3. (a) A farm or farm operation shall not
18 be deemed to be or become a public or private nuisance for
19 purposes of Section 6-5-127, Code of Alabama 1975, or any
20 other provision of law, or be deemed in violation of any
21 municipal or county ordinance or resolution heretofore or
22 hereafter adopted declaring any farm or farm operation a
23 public or private nuisance other than zoning ordinances
24 applicable thereto, if the farm or farm operation meets all of
25 the following requirements:

26 (1) The owner of the land or a partner, officer,
27 director, or other principal thereof, does not act in a

1 careless or wrongful manner, engage in the improper operation
2 of any farm or farm operation, or fail to act or perform a
3 legal obligation.

4 (2) The owner of the land, or a partner, officer,
5 director, or other principal thereof, resides on the farm or
6 actively participates in the operation of the farm, or leases
7 the farm to a person who resides on the farm or actively
8 participates in the operation of the farm.

9 (3) The farm or farm operation conforms to generally
10 accepted agricultural and farm management practices, as well
11 as applicable agricultural health and sanitary procedures,
12 carried out consistently and in accordance with the
13 appropriate rules, regulations, and orders applicable thereto
14 then in force of the Alabama Department of Agriculture and
15 Industries, the Alabama Department of Environmental
16 Management, the Alabama Department of Public Health, the
17 United States Environmental Protection Agency, and the United
18 States Department of Agriculture, including, but not limited
19 to the following agencies thereof: The Natural Resources
20 Conservation Service, the Farm Service Agency, and the Animal
21 and Plant Health Inspection Service.

22 (4) The farm does not comprise within its farm
23 operations a Concentrated Animal Feeding Operation, as
24 described in Section 6 hereof, for feeding, farrowing, and/or
25 finishing swine which was not in existence and actively
26 functioning as such on the effective date of this act, or any
27 expansion of the maximum capacity of a Concentrated Animal

1 Feeding Operation for swine which was in existence and
2 actively functioning on the effective date of this act.

3 (b) The following conditions shall constitute
4 evidence of a farm or farm operation being a nuisance:

5 (1) The owner of the land or a partner, officer,
6 director, or other principal thereof, acts in a careless or
7 wrongful manner, engages in the improper operation of any farm
8 or farm operation, or fails to act or perform a legal
9 obligation.

10 (2) The presence of untreated or improperly treated
11 human waste, or of garbage, offal, dead animals, dangerous
12 waste materials, or gases which are harmful to human or animal
13 life that are not being handled or disposed of in accordance
14 with applicable state or federal laws and regulations.

15 (3) The presence of improperly built or improperly
16 maintained septic tanks, water closets, or privies.

17 (4) The keeping of diseased animals that are
18 dangerous to human health, unless the animals are kept in
19 accordance with a current state or federal disease control
20 program.

21 (5) The presence of unsanitary places where animals
22 are slaughtered, which may give rise to diseases harmful to
23 human or animal life.

24 (6) The presence on the right of way of any public
25 road abutting or traversing the farm of trash, abandoned or
26 worn out equipment, vehicles, parts or implements, other than

1 trash, or items placed there for scheduled removal or
2 disposal.

3 The aforementioned conditions shall not, however,
4 constitute the only evidence to be considered in determining
5 whether a farm or farm operation being conducted thereon
6 constitutes a nuisance.

7 (c) No farm or farm operation shall be deemed to be
8 or shall become a public or private nuisance solely as a
9 result of a change in ownership of the land on which it is
10 located, a change in the type of farm product being produced,
11 a change in the boundaries of the farm, a change in conditions
12 or use of property located adjacent to or in the vicinity of
13 the land on which the farm operation is located, or a change
14 in the farm operation brought about in order to comply with
15 rules and regulations and orders adopted by local, state, or
16 federal agencies.

17 Section 4. The Alabama Litigation Accountability
18 Act, Article 6 (commencing with Section 12-19-270 of Chapter
19 19 of Title 12 of the Code of Alabama 1975), shall apply to
20 this act.

21 Section 5. No municipality, county, or other unit of
22 local government in the state, whether by ordinance,
23 resolution, or otherwise, may declare or treat any farm or
24 farm operation that meets the requirements of Section 3 of
25 this act as a public or private nuisance, and any attempt to
26 take such an action shall have no force and effect beyond the

1 provisions of then applicable state and federal law, rule, or
2 regulation.

3 Section 6. In order that the citizens of Alabama
4 shall have the opportunity to be as fully informed as
5 practicable respecting the establishment hereafter in this
6 state of farm operations known as Concentrated Animal Feeding
7 Operations as defined in Section 502(14) of the Federal Clean
8 Water Act, and as described in Chapter 335-6-7 of the rules
9 promulgated by the Alabama Department of Environmental
10 Management, the Legislature finds and declares that it is the
11 public policy of this state that appropriate nonproprietary
12 information respecting the pendency and issuance of National
13 Pollutant Discharge Elimination Systems general or individual
14 permits in respect of such farm operations be available to the
15 citizens of Alabama, and that the Alabama Department of
16 Environmental Management, in carrying out the public notice
17 provisions and requirements of its Rules 335-6-6.21 and
18 335-6-6.23(5)(d) and (13), shall act consistently with this
19 public policy and said rules and with all applicable federal
20 requirements and guidelines including, by way of example and
21 not limitation, the Unified National Animal Feeding Operation
22 Strategy released by the U.S. Department of Agriculture and
23 the U.S. Environmental Protection Agency on March 9, 1999.

24 Section 7. The provisions of this act are
25 supplemental and shall not be construed to repeal any law not
26 in direct conflict with this act.

1 Section 8. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 9. This act shall become effective
6 immediately upon its passage and approval by the Governor, or
7 upon its otherwise becoming a law.

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Senate

Read for the first time and referred to the Senate
committee on Agriculture, Conservation, and For-
estry 12-JAN-10

Read for the second time and placed on the calen-
dar 1 amendment 02-FEB-10

Read for the third time and passed as amended ... 16-FEB-10

Yeas 30
Nays 0

McDowell Lee
Secretary