

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

1 SB61

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4 ENROLLED, An Act,

5 To enact the Alabama Family Farm Preservation Act,
6 to provide that farm operations, if operated lawfully under
7 certain conditions, may not be characterized as public or
8 private nuisances or be determined to be in violation of a
9 municipal or county ordinance.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 (b) The Legislature recognizes the importance of the
14 family farm in Alabama. It is the intent of the Legislature to
15 assist in the preservation of family farms in Alabama by
16 assuring that lawfully conducted farms and farm operations
17 will not be considered to be public or private nuisances when
18 and so long as they are operated in conformance with generally
19 accepted agricultural and farm management practices, as
20 described herein. The Legislature further recognizes that
21 family farms may incorporate to take advantage of those
22 provisions of law not afforded to other corporations.

23 Section 2. For the purposes of this act, the
24 following words and phrases shall have the following
25 respective meanings:

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

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

1 the employment and use of labor in the production of farm and
2 silvicultural products; provided, however, that such term
3 shall not include or cover any condition existing or
4 activities taking place on a public road or anywhere else
5 other than on a farm as defined herein.

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

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

23 (1) The owner of the land or a partner, officer,
24 director, or other principal thereof, does not act in a
25 careless or wrongful manner, engage in the improper operation

1 of any farm or farm operation, or fail to act or perform a
2 legal obligation.

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

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

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

1 expansion of the maximum capacity of a Concentrated Animal
2 Feeding Operation for swine which was in existence and
3 actively functioning on the effective date of this act.

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

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

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

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

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

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

1 (6) The presence on the right of way of any public
2 road abutting or traversing the farm of trash, abandoned or
3 worn out equipment, vehicles, parts or implements, other than
4 trash, or items placed there for scheduled removal or
5 disposal.

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

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

20 Section 4. The Alabama Litigation Accountability
21 Act, Article 6 (commencing with Section 12-19-270 of Chapter
22 19 of Title 12 of the Code of Alabama 1975), shall apply to
23 this act.

24 Section 5. No municipality, county, or other unit of
25 local government in the state, whether by ordinance,

1 resolution, or otherwise, may declare or treat any farm or
2 farm operation that meets the requirements of Section 3 of
3 this act as a public or private nuisance, and any attempt to
4 take such an action shall have no force and effect beyond the
5 provisions of then applicable state and federal law, rule, or
6 regulation.

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

1 Strategy released by the U.S. Department of Agriculture and
2 the U.S. Environmental Protection Agency on March 9, 1999.

3 Section 7. The provisions of this act are
4 supplemental and shall not be construed to repeal any law not
5 in direct conflict with this act.

6 Section 8. The provisions of this act are severable.
7 If any part of this act is declared invalid or
8 unconstitutional, that declaration shall not affect the part
9 which remains.

10 Section 9. This act shall become effective
11 immediately upon its passage and approval by the Governor, or
12 upon its otherwise becoming a law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB61
Senate 16-FEB-10
I hereby certify that the within Act originated in and passed
the Senate.

McDowell Lee
Secretary

House of Representatives
Passed: 01-APR-10

By: Senator Benefield