

1 SB61
2 115334-1
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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8 SYNOPSIS: This bill would provide that a farm
9 operation operated by an owner or principal may not
10 be found to be a public or private nuisance or a
11 violation of county or municipal ordinances or
12 resolutions unless certain conditions are met.
13 Generally, the farm or an expansion of the farm
14 could not be found to be a nuisance or to be in
15 violation of county or municipal ordinances or
16 resolutions if the farm is operated in accordance
17 with applicable laws and regulations and does not
18 violate certain designated practices. The bill
19 would also authorize the owner of farm to recover
20 legal fees in the event the owner of the farm
21 prevails in any legal action to declare a farm
22 operation to be a nuisance.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

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

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

19 Section 2. For the purposes of this act, the
20 following words and phrases shall have the following
21 respective meanings:

22 (1) FARM. The land, including ponds, buildings,
23 support facilities, machinery, equipment, tractors,
24 implements, and other appurtenances used by the owner or
25 operator thereof in the production of farm products, with
26 respect to which there has been issued a farm serial number by
27 the Farm Services Agency or which comports with the definition

1 of a farm under 7 Code of Federal Regulations 718.2, or any
2 subsequent regulation of similar import.

3 (2) FARM OPERATION. Any condition existing on a farm
4 or activity taking place on a farm pursuant to the instigation
5 or direction of the owner or operator of the farm, including
6 in the latter case, the owner's lessee, agent, or independent
7 contractor, or of a supplier of goods or services, which
8 condition or activity occurs, exists, or is supplied on a farm
9 in connection with the production of farm products and
10 includes, but is not limited to: The marketing of produce at
11 roadside stands or farm markets; the operation of machinery,
12 tractors, implements, and irrigation pumps in the production
13 of farm products; the generation of noise, odors, dust, and
14 fumes in the production of farm products; the plowing of farm
15 land and the harvesting and the planting of trees or crops;
16 the irrigation and ground or aerial seeding and spraying of
17 farm and silvicultural products; the disposal of manure; the
18 application of chemical fertilizers and amendments,
19 conditioners, insecticides, pesticides, and herbicides; and
20 the employment and use of labor in the production of farm and
21 silvicultural products; provided, however, that such term
22 shall not include or cover any condition existing or
23 activities taking place on a public road or anywhere else
24 other than on a farm as defined herein.

25 (3) FARM PRODUCTS. Any plants, fish, or animals
26 useful, or intended to be consumed or used by humans or other
27 animals and plants, and includes, but is not limited to,

1 forages and sod crops, grains and food crops, dairy products,
2 poultry and poultry products, bees, livestock and livestock
3 products, trees and silvicultural products, and fruits,
4 berries, vegetables, flowers, seeds, grasses, and other
5 similar products, as well as any product derived therefrom.

6 Section 3. (a) A farm or farm operation shall not
7 be deemed to be or become a public or private nuisance for
8 purposes of Section 6-5-127, Code of Alabama 1975, or any
9 other provision of law, or be deemed in violation of any
10 municipal or county ordinance or resolution heretofore or
11 hereafter adopted declaring any farm or farm operation a
12 public or private nuisance other than zoning ordinances
13 applicable thereto, if the farm or farm operation meets all of
14 the following requirements:

15 (1) The owner of the land or a partner, officer,
16 director, or other principal thereof, does not act in a
17 careless or wrongful manner, engage in the improper operation
18 of any farm or farm operation, or fail to act or perform a
19 legal obligation.

20 (2) The owner of the land, or a partner, officer,
21 director, or other principal thereof, resides on the farm or
22 actively participates in the operation of the farm, or leases
23 the farm to a person who resides on the farm or actively
24 participates in the operation of the farm.

25 (3) The farm or farm operation conforms to generally
26 accepted agricultural and farm management practices, as well
27 as applicable agricultural health and sanitary procedures,

1 carried out consistently and in accordance with the
2 appropriate rules, regulations, and orders applicable thereto
3 then in force of the Alabama Department of Agriculture and
4 Industries, the Alabama Department of Environmental
5 Management, the Alabama Department of Public Health, the
6 United States Environmental Protection Agency, and the United
7 States Department of Agriculture, including, but not limited
8 to the following agencies thereof: The Natural Resources
9 Conservation Service, the Farm Service Agency, and the Animal
10 and Plant Health Inspection Service.

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

13 (1) The owner of the land or a partner, officer,
14 director, or other principal thereof, acts in a careless or
15 wrongful manner, engages in the improper operation of any farm
16 or farm operation, or fails to act or perform a legal
17 obligation.

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

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

25 (4) The keeping of diseased animals that are
26 dangerous to human health, unless the animals are kept in

1 accordance with a current state or federal disease control
2 program.

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

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

11 The aforementioned conditions shall not, however,
12 constitute the only evidence to be considered in determining
13 whether a farm or farm operation being conducted thereon
14 constitutes a nuisance.

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

25 Section 4. The Alabama Litigation Accountability
26 Act, Article 6 (commencing with Section 12-19-270 of Chapter

1 19 of Title 12 of the Code of Alabama 1975), shall apply to
2 this act.

3 Section 5. No municipality, county, or other unit of
4 local government in the state, whether by ordinance,
5 resolution, or otherwise, may declare or treat any farm or
6 farm operation that meets the requirements of Section 3 of
7 this act as a public or private nuisance, and any attempt to
8 take such an action shall have no force and effect beyond the
9 provisions of then applicable state and federal law, rule, or
10 regulation.

11 Section 6. In order that the citizens of Alabama
12 shall have the opportunity to be as fully informed as
13 practicable respecting the establishment hereafter in this
14 state of farm operations known as Concentrated Animal Feeding
15 Operations as defined in Section 502(14) of the Federal Clean
16 Water Act, and as described in Chapter 335-6-7 of the rules
17 promulgated by the Alabama Department of Environmental
18 Management, the Legislature finds and declares that it is the
19 public policy of this state that appropriate nonproprietary
20 information respecting the pendency and issuance of National
21 Pollutant Discharge Elimination Systems general or individual
22 permits in respect of such farm operations be available to the
23 citizens of Alabama, and that the Alabama Department of
24 Environmental Management, in carrying out the public notice
25 provisions and requirements of its Rules 335-6-6.21 and
26 335-6-6.23(5)(d) and (13), shall act consistently with this
27 public policy and said rules and with all applicable federal

1 requirements and guidelines including, by way of example and
2 not limitation, the Unified National Animal Feeding Operation
3 Strategy released by the U.S. Department of Agriculture and
4 the U.S. Environmental Protection Agency on March 9, 1999.

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

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

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