

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 2257 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/31/05

A Bill

HOUSE BILL 2918

5 By: Representatives Maloch, Norton
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8 **For An Act To Be Entitled**

9 AN ACT CONCERNING THE RIGHT TO FARM; AND FOR
10 OTHER PURPOSES.
11

12 **Subtitle**

13 AN ACT CONCERNING THE RIGHT TO FARM.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code § 2-4-101 is amended to read as follows:
19 2-4-101. Purpose.

20 It is the declared policy of the state to conserve, protect, and
21 encourage the development and improvement of its agricultural ~~land~~ and forest
22 lands and other facilities for the production of food, fiber, and other
23 agricultural and silvicultural products. When nonagricultural land uses
24 extend into agricultural areas, agricultural operations often become the
25 subject of nuisance suits. As a result, agricultural operations are sometimes
26 forced to cease operations. Many others are discouraged from making
27 investments in farm or other agricultural improvements. It is the purpose of
28 this chapter to reduce the loss to the state of its agricultural resources by
29 limiting the circumstances under which agricultural operations may be deemed
30 to be a nuisance.
31

32 SECTION 2. Arkansas Code § 2-4-102 is amended to read as follows:
33 2-4-102. Definition.

34 ~~As used in this chapter, unless the context otherwise requires,~~
35 ~~"agricultural facility" or "facility" means, but is not limited to, any~~



~~plant, facility, structure, or establishment used for the feeding, growing, production, holding, processing, storage, or distribution for commercial purposes of crops, livestock, poultry, swine, or fish, or products derived from any of them.~~

As used in this chapter:

(1) "Agricultural operation" or "farming operation" means an agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including:

(A) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;

(B) The planting, cultivating, harvesting, and processing of crops and timber; and

(C) The production of any plant or animal species in a controlled freshwater or saltwater environment; and

(2) "Agriculture" includes agriculture, silviculture, and aquaculture.

SECTION 3. Arkansas Code § 2-4-104 is repealed.

~~2-4-104. Nonapplicable to certain facilities.~~

~~This chapter shall not apply to an agricultural facility which materially changes its character of operation or materially increases the size of its physical plant.~~

SECTION 4. Arkansas Code § 2-4-105 is amended to read as follows:

2-4-105. Local ordinances void.

Any and all ordinances adopted by any municipality or county in which an agricultural facility operation is located making or having the effect of making the agricultural operation ~~of~~ or any agricultural facility or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this chapter are void and shall have no force or effect.

SECTION 5. Arkansas Code § 2-4-107 is amended to read as follows:

2-4-107. Facility Operation not to become nuisance.

(a) An agricultural facility, its appurtenances, or the operation

1 ~~thereof~~ operation or its facilities or appurtenances shall not be or become a
2 nuisance, private or public, as a result of any changed conditions in and
3 about the locality after it has been in operation for a period of one (1)
4 year or more when the ~~facility, its appurtenances, or the operation thereof~~
5 was agricultural operation or its facilities or appurtenances were not a
6 nuisance at the time the operation began.

7 (b)(1) Except as provided in this section, an agricultural operation
8 shall not be found to be a public or private nuisance if the agricultural
9 operation alleged to be a nuisance employs methods or practices that are
10 commonly or reasonably associated with agricultural production.

11 (2) An agricultural operation that employs methods or practices
12 that are commonly or reasonably associated with agricultural production shall
13 not be found to be a public or private nuisance as a result of any of the
14 following activities or conditions:

15 (A) Change in ownership or size;

16 (B) Nonpermanent cessation or interruption of farming;

17 (C) Participation in any governmental sponsored
18 agricultural program;

19 (D) Employment of new technology; or

20 (E) Change in the type of agricultural product produced.

21 (c)(1) Notwithstanding any other provision of this section to the
22 contrary, an agricultural operation shall not be found to be a public or
23 private nuisance if the agricultural operation:

24 (A) Was established prior to the commencement of the use
25 of the area surrounding the agricultural operation for nonagricultural
26 activities; and

27 (B) Employs methods or practices that are commonly or
28 reasonably associated with agricultural production.

29 (2) Employment of methods or practices that are commonly or
30 reasonably associated with agricultural production or compliance with any
31 state or federally issued permit shall create a rebuttal presumption that an
32 agricultural operation is not a nuisance.

33 (d) The court may award expert fees, reasonable court costs, and
34 reasonable attorney's fees to the prevailing party in any action brought to
35 assert that an agricultural operation is a private or public nuisance.

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SECTION 2. Arkansas Code Title 2, Chapter 4, Subchapter 1 is amended to add the following section:

2-4-108. Liberal construction.

This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.

/s/ Maloch, et al

APPROVED: 4/13/2005

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