

Hall of the House of Representatives
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of House Bill No. 2918

"AN ACT TO BE KNOWN AS THE "ARKANSAS RIGHT TO FARM ACT"."

Amendment No. 1 to House Bill No. 2918.

Amend House Bill No. 2918 as originally introduced:

Add Representative Norton as a cosponsor of the bill

AND

Delete the Title and substitute the following:

"AN ACT CONCERNING THE RIGHT TO FARM; AND FOR OTHER PURPOSES."

AND

Delete the Subtitle and substitute the following:

"AN ACT CONCERNING THE RIGHT TO FARM."

AND

Delete everything after the Enacting Clause and substitute the following:

"SECTION 1. Arkansas Code § 2-4-101 is amended to read as follows:
2-4-101. Purpose.

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

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

~~As used in this chapter, unless the context otherwise requires, "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 thereof operation or its facilities or appurtenances shall not be or become a nuisance, private or public, as a result of any changed conditions in and about the locality after it has been in operation for a period of one (1) year or more when the facility, its appurtenances, or the operation thereof was agricultural operation or its facilities or appurtenances were not a nuisance at the time the operation began.

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

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

(A) Change in ownership or size;

(B) Nonpermanent cessation or interruption of farming;

(C) Participation in any governmental sponsored agricultural program;

(D) Employment of new technology; or

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

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

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

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

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

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

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.

The Amendment was read _____

By: Representative Maloch
JDF/CDS - 03-28-2005 16:24
JDF430

Chief Clerk