

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 3215

By: Pope (Clay) of the House

and

Shurden, Fair and Muegge
of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to corporations and agriculture; creating the Oklahoma Farming or Ranching Business Entities Act; defining terms; amending 18 O.S. 1991, Sections 955, as last amended by Section 6, Chapter 2, O.S.L. 1994, 954, as amended by Section 2, Chapter 61, O.S.L. 1994, 952 and 953, as amended by Section 1, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Sections 953, 954 and 955), which relate to corporate farming; clarifying and updating language; prohibiting certain business entities from owning, acquiring and otherwise obtaining or leasing agricultural land and forming corporations and other business entities and from engaging in the business of farming or ranching; specifying certain conditions and restrictions; providing and adding to exceptions; adding to, modifying and clarifying certain exceptions; making certain production contracts not construed to mean or include ownership, acquisition, obtaining or leasing of agricultural land or engaging in farming; requiring certain submissions; requiring certain determinations of compliance; increasing penalty; providing for civil and criminal penalties; requiring certain divestments and disposition of property; authorizing injunctions; requiring the Attorney General to institute certain suits; authorizing district attorneys to institute certain suits; providing for deposit of recovered funds; requiring certain filings; providing contents; providing procedures and requirements; making certain actions unlawful; authorizing certain citizen suits; providing for costs; requiring submission of certain reports; providing for contents; providing for penalty; making reports public; making certain actions unlawful; providing for prosecution of certain violations; specifying certain civil penalties; amending 2 O.S. 1991, Section 9-202, as amended by Section 2, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-202), which relates to the Oklahoma Concentrated Animal Feeding Operations Act; adding and modifying terms; modifying term relating to animal units; providing for alternative calculation; repealing 18 O.S. 1991, Sections 951 and 956, which relate to forming of certain corporations and civil actions relating thereto; providing for recodification; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 957.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

The provisions of Chapter 21 of Title 18 of the Oklahoma Statutes shall be known and may be cited as the "Oklahoma Farming or Ranching Business Entities Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 957.2 of Title 18, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Farming or Ranching Business Entities Act:

1. "Agricultural land" means land suitable for use in farming;
2. "Breeding livestock, poultry, or crops for developing genetically superior livestock, poultry, or crops whether for sale or replacement" means the breeding or raising of livestock, poultry, eggs, or crops for the purpose of producing seed stock, new strains, or genetically modifying livestock, poultry, eggs, or crops to improve growth, resistance factors, production, and other physical traits and attributes;
3. "Business entity" means any corporation, corporate partnership, limited liability company, partnership, limited partnership, trust, cooperative, association or any other type of organization, and any affiliates or combinations of such entities;
4. "Farming or ranching" means the cultivation of land for the production of agricultural crops, the breeding or raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, or the breeding or raising of livestock. The term "farming or ranching" shall not include the production of timber, forest products, nursery products or sod, feed mills, hatcheries, custom feeding of cattle, processing facilities, grain storage facilities, food canning operations, food processing or frozen food processing, or

contracts to provide spraying, harvesting or other such services;
and

5. "Production contract" means a contract entered into by a business entity with an individual engaged in farming or ranching in this state for the production of agricultural products, or breeding or raising of livestock or poultry, including, but not limited to, grow-out contracts, marketing agreements, lease arrangements, or other arrangements under which an individual engaged in the business of farming or ranching cares for, maintains, or raises livestock or poultry.

SECTION 3. AMENDATORY 18 O.S. 1991, Section 955, as last amended by Section 6, Chapter 2, O.S.L. 1994 (18 O.S. Supp. 1997, Section 955), is amended to read as follows:

Section 955. A. ~~No~~ Except as otherwise provided by the Oklahoma Farming or Ranching Business Entities Act, no person, corporation, association or any other business entity shall engage in farming or ranching, or own or lease any interest in land to be used in the business of farming or ranching, except the following:

1. Natural persons and the estates of such persons;
2. Trustees of trusts; provided that:
 - a. each beneficiary shall be a person or entity enumerated in paragraphs 1 through 5 of this subsection, ~~and~~
 - b. there shall not be more than ten beneficiaries unless the beneficiaries in excess of ten are related as lineal descendants or are or have been related by marriage or adoption to lineal descendants, and
 - c. at least sixty-five percent (65%) of the trust's annual gross receipts shall be derived from farming or ranching, or from allowing others to extract minerals underlying lands held by the trust. If the trust cannot ~~comply with~~ meet the annual gross receipts test, the trust may furnish ~~records of~~ its gross receipts for each of the previous five (5) years, or for each year that it has been in

existence if less than five (5) years, and the average of such annual gross receipts may be used for purposes of complying with this section;

3. Corporations, as ~~provided for authorized in Sections 951 through 954 of this title, or as otherwise permitted by law~~ the Oklahoma Farming or Ranching Business Entities Act;

4. Partnerships and limited partnerships; provided that:

- a. each partner shall be a person or entity enumerated in paragraphs 1 through 5 of this subsection, ~~and~~
- b. there shall not be more than ten partners unless said partners in excess of ten are related as lineal descendants or are or have been related by marriage or adoption to lineal descendants, and
- c. at least sixty-five percent (65%) of the partnership's annual gross receipts shall be derived from farming or ranching, or from allowing others to extract minerals underlying lands held by the partnership. If the partnership cannot ~~comply with~~ meet the annual gross receipts test, the partnership may furnish ~~records of~~ its gross receipts for each of the previous five (5) years, or for each year that it has been in existence if less than five (5) years, and the average of such annual gross receipts may be used for purposes of complying with this section; and

5. Limited liability companies formed pursuant to the Oklahoma Limited Liability Company Act; provided that:

- a. each member shall be a person or entity enumerated in paragraphs 1 through 5 of this subsection, ~~and~~
- b. there shall not be more than ten members unless said members in excess of ten are related as lineal descendants or are or have been related by marriage or adoption to lineal descendants, and
- c. at least sixty-five percent (65%) of the limited liability company's annual gross receipts shall be derived from farming or ranching, or from allowing

others to extract minerals underlying lands held by the limited liability company. If the limited liability company cannot ~~comply with~~ meet the annual gross receipts test, the limited liability company may furnish ~~records of~~ its gross receipts for each of the previous five (5) years, or for each year that it has been in existence if less than five (5) years, and the average of such annual gross receipts may be used for purposes of complying with this section.

~~B. Any farming or ranching corporation, trust, partnership, limited partnership, limited liability company or other entity which violates any provisions of this section shall be fined an amount not to exceed Five Hundred Dollars (\$500.00). Any other person or entity who knowingly violates this section shall be deemed guilty of a misdemeanor.~~

~~C. The provisions of this act shall not apply to interests in land acquired prior to June 1, 1978. Domestic corporations may own, acquire and otherwise obtain or lease any agricultural land in this state or be formed under the Oklahoma General Corporation Act to engage in the business of farming or ranching if the following requirements are met by the domestic business entity:~~

1. There shall be no shareholders other than:

a. natural persons,

b. estates,

c. trustees of trusts for the benefit of natural persons, if such trustees are either:

(1) natural persons, or

(2) banks or trust companies which either have their principal place of business in Oklahoma or are organized under the laws of the State of Oklahoma, or

d. corporations owned by no shareholders other than those described in subparagraph a, b or c of this paragraph and meeting the requirements of paragraph 3 of this section;

2. a. Not more than thirty-five percent (35%) of the corporation's annual gross receipts shall be from any source other than:
- (1) farming or ranching or both, as the case may be,
or
- (2) allowing others to extract from the corporate lands any minerals underlying the same,
including, but not limited to, oil and gas,
- b. In the event a corporation does not meet the thirty-five percent (35%) annual gross receipt test, then the corporation may furnish records of its gross receipts for each of the previous five (5) years, or for each year that it has been in existence if less than five (5) years, and the average of said annual gross receipts shall be used in lieu of the annual gross receipts of the corporation for purposes of complying with this section; and
3. a. Except as otherwise provided in this paragraph, there shall not be more than ten shareholders unless the shareholders in excess of ten are related as lineal descendants or are or have been related by marriage to lineal descendants or persons related to lineal descendants by adoption or any combination of same, or
- b. For a corporation engaged in breeding horses, there shall not be more than twenty-five shareholders.

SECTION 4. AMENDATORY 18 O.S. 1991, Section 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Section 954), is amended to read as follows:

Section 954. A. ~~The provisions of this act, Section 951 et seq. of this title, the Oklahoma Farming or Ranching Business Entities Act shall not apply where a corporation, either domestic or foreign~~ if a business entity:

1. Engages in bona fide educational, scientific or experimental research ~~and/or feeding arrangements or operations~~

~~concerned with~~ in the feeding of livestock or poultry, or bona fide educational, scientific or experimental research in farming, but only to the extent of such research ~~and/or feeding arrangements or such livestock or poultry operations.~~ The provisions of this paragraph include but are not limited to research for breeding livestock, poultry or crops for developing genetically superior livestock, poultry or crops whether for sale or replacement; ~~or~~

2. ~~Engages in operations concerned with the production and raising of livestock or poultry for sale or use as breeding stock and including only directly related operations, such as the breeding or feeding of livestock or poultry which are not selected or to be sold as for breeding stock purposes or to be used by the authorized business entity in its production contract relationship;~~ ~~or~~

3. ~~Engages in poultry and/or swine operations, including only directly related operations, such as operating hatcheries, facilities for the production of breeding stock, feed mills, processing facilities, and providing supervisory, technical and other assistance to any other persons performing such services on behalf of the corporation;~~ ~~or~~

4. Acquires agricultural land in such acreage as is necessary for the operation of a nonfarming or nonranching business. Such land shall not be used for farming or ranching except under lease to those entities specified in Section 3 of this act;

4. Acquires agricultural land:

- a. as a bona fide encumbrance taken for purposes of security,
- b. by process of law in the collection of debts,
- c. pursuant to a contract for deed executed prior to the effective date of this act, or
- d. by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

A business entity acquiring agricultural land by process of law in the collection of debts or pursuant to a contract for deed

executed prior to the effective date of this act shall divest itself of any such agricultural land or ownership within five (5) years after such process of law, contract or procedure;

5. Acquires a lease on agricultural land:

- a. as a bona fide encumbrance taken for purposes of security,
- b. by process of law in the collection of debts,
- c. pursuant to a contract for deed executed prior to the effective date of this act,
- d. by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise,
- e. as a part of financial negotiations between a business entity and a contract grower, or
- f. for factors not limited to death, divorce or disability of the contract grower;

6. Which is a trust company or bank acting in a fiduciary capacity or as a trustee for a nonprofit corporation, acquires agricultural land;

7. Acquired agricultural land, by lease or ownership, prior to July 1, 1998, if the business entity was in compliance with the provisions of Title 18 O.S. 1991, Sections 951 through 956, as amended, prior to the effective date of this act.

- a. If any such business entity owned or leased the agricultural land prior to July 1, 1998, the business entity shall not own or lease any greater acreage of agricultural land or number of livestock than it owned or leased prior to July 1, 1998, except as otherwise provided by this paragraph.
- b. The provisions of this paragraph shall not prohibit the acquisition of agricultural land as a result of the purchase or merger of another business entity owning agricultural land acquired prior to July 1, 1998, as long as the cumulative number of livestock for the combined business entities does not exceed

the maximum number authorized by this paragraph for each such business entity;

8. Acquired agricultural land pursuant to a purchase agreement as authorized by Title 18 O.S. 1991, Sections 951 through 956, as amended, prior to July 1, 1998, if the business was in compliance with the provisions of Title 18 O.S. 1991, Sections 951 through 956, as amended, prior to the effective date of this act.

a. If the business entity executed the purchase agreement for the agricultural land prior to July 1, 1998, the business entity shall not own or lease any greater acreage of agricultural land or number of livestock than it owned or leased prior to July 1, 1998, except as otherwise provided by this paragraph.

b. The provisions of this paragraph shall not prohibit the acquisition of agricultural land as a result of the purchase or merger of another business entity owning agricultural land acquired prior to July 1, 1998, as long as the cumulative number of livestock for the combined business entities does not exceed the maximum number authorized by this paragraph for each such business entity;

9. Leases agricultural land for the pasturing or grazing of livestock for one (1) year or less and is a business entity other than those specified in Section 3 of this act;

10. Engages in forestry as defined by Section 1-4 of Title 2 of the Oklahoma Statutes; ~~or~~

~~5. Whose~~ 11. Is one whose corporate purpose is charitable or eleemosynary; or

~~6. 12.~~ Presently engages in fluid milk processing within the State of Oklahoma or leases to a fluid milk processor so engaged; provided, this exception is limited to such dairy operations as are necessary to meet such processor's needs.

B. The execution of a production contract with an individual engaged in farming or ranching in this state shall not be

construed to mean or include the ownership, acquisition, or lease of, or otherwise obtaining, either directly or indirectly, any agricultural land in this state by the business entity.

SECTION 5. AMENDATORY 18 O.S. 1991, Section 952, is amended to read as follows:

Section 952. A. ~~Any license issued after June 1, 1971, under the Oklahoma Business Corporation Act to a foreign corporation for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching shall be revoked within five (5) years of the effective date of this act.~~

B. ~~The corporate franchise of any existing domestic corporation formed under the Oklahoma Business Corporation Act after June 1, 1971, for the purpose of engaging in farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching shall be vacated within five (5) years of the effective date of this act unless its articles of incorporation comply with Section 951 of this title.~~

1. The Office of the Secretary of State shall submit on a monthly basis to the Department of Agriculture a list of all business entities receiving certificates of incorporation or corporate powers, franchises, licenses or other authorization pursuant to the provisions of the Oklahoma Farming or Ranching Business Entities Act whose stated purpose in whole or in part is farming or ranching.

2. Each business entity owning, acquiring or otherwise obtaining or leasing any agricultural land in this state or forming under the Oklahoma General Corporation Act shall specifically provide in their stated purpose, or in an amended purpose, in whole or in part, that such business entity owns, is acquiring, or is otherwise obtaining or leasing agricultural land in this state or is engaged in the business of farming or ranching.

B. The Department of Agriculture shall, prior to granting any license, permit, authorization or certificate, or renewal thereof,

for a business entity pursuant to the Agricultural Code, determine whether such business entity is in compliance with the Oklahoma Farming or Ranching Business Entities Act.

C. ~~The corporate franchise powers, privileges, franchises, certificate, license, or other authorization of any domestic corporation governed by the Oklahoma General Corporation Act~~ business entity formed for the purpose of farming or ranching or for the purpose of owning or leasing any interest in land to be used in the business of farming or ranching and permitted to engage in such activity ~~under this act~~ pursuant to the Oklahoma Farming or Ranching Business Entities Act shall be vacated promptly in the manner prescribed by Section ~~104~~ 1104 of this ~~act~~ title, if ~~the corporation~~ such business entity has persistently violated the provisions of ~~subsection A of Section 951 of this title~~ the Oklahoma Farming or Ranching Business Entities Act.

D. 1. The State Board of Agriculture shall initiate and prosecute civil or criminal actions and proceedings when deemed necessary to enforce or carry out any of the provisions of ~~this code~~ the Oklahoma Farming or Ranching Business Entities Act.

2. The district courts of this state may prevent and restrain violations of the Oklahoma Farming or Ranching Business Entities Act through the issuance of an injunction.

3. The Attorney General or district attorney shall institute suits on behalf of the state to enforce the provisions of the Oklahoma Farming or Ranching Business Entities Act.

E. ~~This act~~ Except as otherwise provided by the Oklahoma Farming or Ranching Business Entities Act, a business entity, either domestic or foreign, shall not require any foreign or domestic corporation be required to dispose of any property acquired on or before ~~June 1, 1971~~ July 1, 1998.

F. Any ~~farming or ranching corporation~~ entity subject to the Oklahoma Farming or Ranching Business Entities Act which violates the provisions of ~~Section 951 of this title~~ the Oklahoma Farming or Ranching Business Entities Act, upon conviction thereof, shall be guilty of a misdemeanor and shall be fined an amount not to exceed less than Five Hundred Dollars (\$500.00). ~~Any other~~

~~person, corporation or entity who knowingly violates such section shall be deemed guilty of a misdemeanor.~~

G. 1. Any corporation violating the provisions of the Oklahoma Farming or Ranching Business Entities Act shall be subject to a civil penalty of not more than Fifty Thousand Dollars (\$50,000.00) and shall divest itself of any land acquired in violation of this section within one (1) year after judgment is entered in the action.

2. Civil penalties sued for and recovered by the Attorney General shall be paid into the state General Revenue Fund. Civil penalties sued for and recovered by the district attorney shall be paid into the general fund of the county where the proceedings were instigated.

SECTION 6. AMENDATORY 18 O.S. 1991, Section 953, as amended by Section 1, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Section 953), is amended to read as follows:

Section 953. A. ~~No corporation organized for a purpose other than farming or ranching shall own, lease or hold, directly or indirectly, agricultural lands in excess of that amount reasonably necessary to carry out its business purpose.~~

~~B.~~ Any resident of the county in which the land is situated, who is of legal age, or the State Department of Agriculture may initiate an action for the divestment of an interest in land held by a ~~corporation~~ business entity in violation of the provisions of ~~Sections 951 through 954 of this title~~ the Oklahoma Farming or Ranching Business Entities Act, in the county in which the land is situated. If such action is successful, all costs of the action shall be assessed against the defendant ~~corporation~~ business entity, and a reasonable attorney's fee shall be allowed the plaintiff. Should judgment be rendered for the defendant, such costs and a reasonable attorney's fee for the defendant shall be paid by the plaintiff.

~~C.~~ B. In the event an action for the divestment of an interest in land held by a ~~corporation~~ business entity in violation of the provisions of ~~Sections 951 through 954 of this title~~ the Oklahoma Farming or Ranching Business Entities Act is

successful against said ~~corporation~~ business entity, said ~~corporation~~ the business entity shall be required to dispose of said the land within such reasonable period of time as may be ordered by the court, subject to the ~~corporation's~~ business entity's right of appeal. ~~Except as otherwise provided by Section 954 of this title, the provisions of Sections 951 through 954 of this title shall not apply to corporations engaging in food canning operations, food processing or frozen food processing insofar as such corporations engage in the raising of food products for aforesaid purposes.~~

~~D.~~ C. Upon the petition to a court of competent jurisdiction by shareholders holding twenty-five percent (25%) or more of the shares in a farming or ranching business corporation the court in its discretion, for good cause shown, may order the corporation dissolved and the assets of such corporation divided in kind pro rata to the shareholders or liquidated and the proceeds of such liquidation divided pro rata to the shareholders all according to the procedures specified for the dissolution and liquidation of business corporations under the Oklahoma General Corporation Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 957.7 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. 1. All business entities, except those specified in Section 3 of this act, holding property used in farming or ranching operations and which are authorized to own or lease property in this state for the purpose of farming or ranching or to engage in the business of farming or ranching, pursuant to the provisions of the Oklahoma Farming or Ranching Business Entities Act, shall submit by August 1, 1998, and July 1 of each year thereafter, a report containing a monthly accounting of the number of animal units by species and weight located on any land or at any facility owned or operated by the business entity in this state on such date and any other information required by the State Board of Agriculture.

2. The report shall be signed by the board of directors of the business entity, or other person designated by the business entity to sign legal documents, under penalty of perjury.

3. The report shall be filed with the Office of the Secretary of State and the Department of Agriculture and shall be available to the public at such offices.

B. Any person or business entity which:

1. Knowingly submits false or materially misleading information or statements;

2. Through the proper and due exercise of care and diligence, should have known that any submission of information and statements required of business entities subject to the provisions of this section are false or materially misleading; or

3. Fails or refuses to submit any required information and statements,

is guilty of a misdemeanor and, upon conviction thereof, may be subject to the penalty specified by Section 5 of this act.

C. The Secretary of State shall keep a separate index of all business entities subject to the provisions of this section.

SECTION 8. AMENDATORY 2 O.S. 1991, Section 9-202, as amended by Section 2, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-202), is amended to read as follows:

Section 9-202. A. Concentrated animal feeding operations are point sources subject to the license program established pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act.

B. As used in the Oklahoma Concentrated Animal Feeding Operations Act:

1. "Affected property owner" means a surface landowner within:

a. one (1) mile of the designated perimeter of an animal feeding operation for which a license is being sought which:

(1) does not meet the definition of a licensed managed feeding operation, or an expansion

(2) is a previously unlicensed or an expanding licensed managed feeding operation with a capacity of two thousand (2,000) or less animal units, or

b. two (2) miles of the designated perimeter of a licensed managed feeding operation or an expanding operation for which a license is being sought with a capacity of more than two thousand (2,000) animal units;

2. "Animal feeding operation" means a lot or facility where the following conditions are met:

- a. animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and
- b. crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

The term "animal feeding operation" shall not include a racetrack licensed by the Oklahoma Horse Racing Commission to hold pari-mutuel race meetings pursuant to the Oklahoma Horse Racing Act if such facility discharges to a publicly owned treatment works ~~(POTW)~~, or an aquatic animal production facility~~;~~

3. "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by one (1), plus the number of mature dairy cattle multiplied by one and four-tenths (1.4), plus the number of swine weighing over twenty-five (25) kilograms, approximately fifty-five (55) pounds, multiplied by four-tenths (0.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (0.1), plus the number of sheep multiplied by one-tenth (0.1), plus the number of horses multiplied by two (2). In lieu of determining animal units by adding actual numbers of animals as specified by this paragraph, an animal feeding operation may calculate animal units by adding the average of the number of animals confined at

the animal feeding operation over the span of a year or, if less than a year, over such other time period specified by the Department;

4. "Animal waste" means animal excrement, animal carcasses, feed wastes, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation;

5. "Animal Waste Management Plan" or "AWMP" means a written plan that includes a combination of conservation and management practices designed to protect the natural resources of the state prepared by an owner or operator of an animal feeding operation as required by the Department pursuant to the provisions of Section ~~9~~ 9-205.3 of this ~~act~~ title;

6. "Animal waste management system" means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste;

7. "Artificially constructed" means constructed by humans;

8. "Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state as established by the State Department of Agriculture pursuant to Section ~~9~~ 9-205.3 of this ~~act~~ title;

9. "Board" means the State Board of Agriculture;

10. "Common ownership" includes but is not limited to any corporation, partnership or individual where the same owner has power or authority to manage, direct, restrict, regulate or oversee the operation or has financial control of the facility;

11. "Concentrated animal feeding operation" or "CAFO" means:

- a. a licensed managed feeding operation, or
- b. an animal feeding operation which meets the following criteria:

- (1) more than the number of animals specified in any of the following categories are confined:

- (a)—1,000 slaughter and feeder cattle,

- (b)—700 mature dairy cattle, whether milk or dry cows,

- ~~(c) 2,500 swine each weighing over 25 kilograms or approximately 55 pounds,~~
- ~~(d) 10,000 weaned swine each weighing under 25 kilograms,~~
- ~~(e) 500 horses,~~
- ~~(f) (d) 10,000 sheep or lambs,~~
- ~~(g) (e) 55,000 turkeys,~~
- ~~(h) 100,000 laying hens or broilers, if the facility has continuous overflow watering,~~
- ~~(i) 30,000 laying hens or broilers, if the facility has a liquid manure system,~~
- ~~(j) (f) 5,000 ducks, or~~
- ~~(k) (g) 1,000 animal units, and~~

(2) pollutants are discharged into waters of the state. Provided, no animal feeding operation pursuant to this subparagraph shall be construed to be a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or

c. an animal feeding operation which meets the following criteria:

- (1) more than the number of animals specified in any of the following categories are confined:
 - (a) 300 slaughter or feeder cattle,
 - (b) 200 mature dairy cattle, whether milk or dry cows,
 - (c) 750 swine each weighing over 25 kilograms or approximately 55 pounds,
 - (d) 3,000 weaned swine each weighing under 25 kilograms,
 - (e) 150 horses,
 - (f) 3,000 sheep or lambs,
 - (g) 16,500 turkeys,
 - (h) 30,000 laying hens or broilers, if the facility has continuous overflow watering,

- (i) 9,000 laying hens or broilers, if the facility has a liquid manure system,
 - (j) 1,500 ducks, or
 - (k) 300 animal units, and
- (2) either one of the following conditions are met:
- (a) pollutants are discharged into waters of the state through an artificially constructed ditch, flushing system or other similar artificially constructed device, or
 - (b) pollutants are discharged directly into navigable waters which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation pursuant to this subparagraph is a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a twenty-five-year, twenty-four-hour storm event, or

- d. the Board determines that the operation is a significant contributor of pollution to waters of the state pursuant to Section ~~5~~ 9-204.1 of this ~~act~~ title;

12. "Department" means the ~~Oklahoma~~ Oklahoma State Department of Agriculture;

13. "Designated perimeter" means the perimeter of any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, composters, waste storage sites, or retention structures or appurtenances or additions thereto;

14. "Expanding operation" means:

- a. a facility that either increases its animal unit capacity to a number that causes the facility to

initially meet the definition of a ~~license~~ licensed managed feeding operation, or

- b. a licensed managed ~~animal~~ feeding operation that seeks to increase its licensed capacity in excess of five percent (5%) of the original facility's licensed capacity;

~~14.~~ 15. "Facility" means any place, site or location or part thereof where animals are kept, handled, housed, or otherwise maintained and processed and includes but is not limited to buildings, lots, pens, and animal waste management systems;

~~15.~~ 16. "Interested party" means an affected property owner who validly requests an individual hearing, in accordance with the provisions of the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant thereto regarding the issuance of an animal feeding operation license and asserts rights to relief in respect to or arising out of the same license;

~~16.~~ 17. "Land application" means the spreading on, or incorporation of animal waste into the soil mantle primarily for beneficial purposes;

18. "Licensed managed feeding operations (LMFO)" means an animal feeding operation primarily using a liquid animal waste management system, where animals are primarily housed in a roof-covered structure and which has more than the number of animals specified in any of the following categories confined:

- a. ~~2,000 slaughter and feeder cattle,~~
- b. ~~1,400 mature dairy cattle, whether milk or dry cows,~~
- e. ~~5,000~~ 2,500 swine each weighing over 25 kilograms, approximately 55 pounds,
- d. b. ~~20,000~~ 10,000 weaned swine each weighing under 25 kilograms,
- e. ~~1,000 horses,~~
- f. ~~20,000 sheep or lambs,~~
- g. ~~110,000 turkeys,~~
- h. c. ~~200,000~~ 100,000 laying hens or broilers, if the facility has continuous overflow watering,

~~i. d.~~ ~~60,000~~ 30,000 laying hens or broilers, if the facility has a liquid manure system,

~~j.~~ ~~10,000~~ ducks, or

~~k. e.~~ ~~2,000~~ any combination of swine weighing over twenty-five (25) kilograms or under twenty-five (25) kilograms which would equal one thousand (1,000) animal units;

~~17.~~ 19. "Liquid animal waste management system" means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure;

~~18.~~ 20. "Managing operator" means the owner or one who is responsible for the management of each facility of a concentrated animal feeding operation or animal feeding operation;

21. "Nutrient-limited watershed" means a watershed of a waterbody which is designated as "nutrient-limited" in the most recent Oklahoma Water Quality Standards;

22. "Nutrient-vulnerable groundwater" means groundwater which is designated "nutrient-vulnerable" in the most recent Oklahoma Water Quality Standards;

23. "Odor Abatement Plan" or "OAP" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce odor as established by the State Department of Agriculture pursuant to Section 9 of this act;

24. "Occupied residence" means a habitable structure designed and constructed for full-time occupancy in all weather conditions which:

- a. is not readily mobile,
- b. is connected to a public or permanent source of electricity and a permanent waste disposal system or public waste disposal system, and
- c. is occupied as a residence;

~~19.~~ 25. "Pollution Prevention Plan" or "PPP" means a written plan to control the discharge of pollutants which has been prepared in accordance with industry-acceptable engineering and management practices by the owner or operator of an animal feeding

operation as required pursuant to Section & 9-205.2 of this ~~act~~
title;

~~20.~~ 26. "Process wastewater" means any water utilized in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of animals and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact, swimming, washing or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste;

~~21.~~ 27. "Retention structures" includes but is not limited to all collection ditches, conduits and swales for the collection of runoff water and process wastewater, and basins, ponds and lagoons or other structures used to store animal wastes;

~~22.~~ 28. "Waste facility" means any structure or combination of structures utilized to control animal waste until it can be disposed of in an authorized manner. Such structures shall include but not be limited to pits, burial sites, barns or roof-covered structures housing animals, compostors, waste storage sites, or retention structures or appurtenances or additions thereto; and

~~23.~~ 29. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Process wastewaters shall not be considered as waters of the state if contaminated at the site.

Section 4 of this act, 952, as amended by Section 5 of this act, and 953, as last amended by Section 6 of this act, shall be recodified as Sections 957.3 through 957.6 of Title 18 of the Oklahoma Statutes, respectively, unless there is created a duplication in numbering.

SECTION 10. REPEALER 18 O.S. 1991, Sections 951 and 956, are hereby repealed.

SECTION 11. This act shall become effective July 1, 1998.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-11756 KSM