

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2293

By: Leist

AS INTRODUCED

An Act relating to concentrated animal feeding operations and corporate farming or ranching; amending 2 O.S. 1991, Section 9-212, as last amended by Section 20, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-212), which relates to penalties for certain animal feeding operations; clarifying language; providing for administrative penalties; specifying limit; authorizing injunctions; clarifying intent of law; providing for attorney fees and court costs; authorizing certain other actions; providing who may bring action; requiring performance of certain duties; providing for certain determinations relating to the amount of penalty; providing for deposits; amending 18 O.S. 1991, Sections 952 and 954, as amended by Section 2, Chapter 61, O.S.L. 1994 (18 O.S. Supp. 1997, Section 954), which relate to the Oklahoma Farming or Ranching Business Corporations Act; creating short title; prohibiting the issuance of new corporate licenses for certain corporate poultry confinement and/or corporate swine production operations in this state; prohibiting expansion of existing corporations in such operations; providing for construction of section;

modifying exceptions; defining terms; providing for county resolution and county proposition to allow or prohibit corporate poultry confinement and/or corporate swine production; providing procedures; requiring publication; providing for question on ballot; providing for election and publication of results; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 2 O.S. 1991, Section 9-212, as last amended by Section 20, Chapter 331, O.S.L. 1997 (2 O.S. Supp. 1997, Section 9-212), is amended to read as follows:

Section 9-212. A. Any person violating the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or any rule of the Board promulgated pursuant thereto shall, upon conviction, be deemed guilty of a misdemeanor and upon conviction thereof may be punished by a fine not exceeding Two Hundred Dollars (\$200.00).

B. Any owner or operator who fails to take such action as may be reasonable and necessary to avoid pollution of any stream, lake, river or creek, except as otherwise provided by law, or who violates any rule of the Board adopted to prevent water pollution from animal feeding operations pursuant to this act shall, upon conviction, be deemed guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of Five Hundred Dollars (\$500.00) to Ten Thousand Dollars (\$10,000.00) for each violation, by imprisonment in the county jail for not more than six (6) months for each violation, or by the assessment of ~~an administrative~~ a civil penalty up to Ten Thousand Dollars (\$10,000.00) for each violation or by any of such fine, imprisonment, and ~~administrative~~ civil penalty.

C. 1. In addition to the criminal and civil penalties specified by this section, the Department of Agriculture may:

- a. assess an administrative penalty of not more than Ten Thousand Dollars (\$10,000.00) per day of noncompliance, or
- b. bring an action for injunctive relief granted by a district court.

2. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of the Oklahoma Concentrated Animal Feeding Operations Act or any rule promulgated thereunder or order, license or permit issued pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.

3. Nothing in this section shall preclude the Department from seeking penalties in district court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of the Oklahoma Concentrated Animal Feeding Operations Act.

4. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

5. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of the Oklahoma Concentrated Animal Feeding Operations Act or any rule promulgated thereunder, or order, license or permit issued pursuant thereto.

- 6. a. Any action for injunctive relief to redress or restrain a violation by any person of the Oklahoma Concentrated Animal Feeding Operations Act or for any rule promulgated thereunder, or order, license, or

permit issued pursuant thereto or recovery of any administrative or civil penalty assessed pursuant to the Oklahoma Concentrated Animal Feeding Operations Act may be brought by:

- (1) the district attorney of the appropriate district court of the State of Oklahoma,
- (2) the Attorney General on behalf of the State of Oklahoma, or
- (3) the Department on behalf of the State of Oklahoma.

b. The court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

c. It shall be the duty of the Attorney General and district attorney if requested by the Commissioner of Agriculture to bring such actions.

7. Except as otherwise provided by law, administrative and civil penalties shall be paid into the Department of Agriculture Revolving Fund.

8. In determining the amount of a civil penalty or administrative penalty, the court or the Department, as the case may be, shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

D. For the purposes of this section, each day upon which a violation is committed or is permitted to continue shall be deemed a separate offense.

~~D.~~ E. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in any water pollution form, notice or report, or who knowingly renders inaccurate any monitoring device or method required to be maintained by any water pollution regulations adopted by the Board, shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 950 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 Corporations Act".

SECTION 3. AMENDATORY 18 O.S. 1991, Section 952, is amended to read as follows:

Section 952. A. 1. 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.~~ 2. 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.

3. This section shall not require any foreign or domestic corporation to dispose of any property acquired on or before June 1, 1971.

B. 1. On and after July 1, 1998, no license shall be issued pursuant to the Oklahoma Farming or Ranching Business Corporations Act to a domestic or foreign corporation for the purpose of engaging in the business of corporate poultry confinement and/or corporate swine production or for the purpose of owning or leasing any interest in land to be used in the business of corporate poultry confinement and/or corporate swine production unless a county has voted favorably pursuant to Section 5 of this act either by county resolution or by the electorate to allow corporate poultry confinement and/or corporate swine production to operate within the county.

2. On and after July 1, 1998, no domestic or foreign corporation operating or engaging in the business of corporate poultry confinement and/or corporate swine production on July 1, 1998, shall be authorized to purchase or lease any additional interest in land to be used in the business of corporate poultry confinement and/or corporate swine production.

3. Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

4. The provisions of this section shall not require any foreign or domestic corporation to dispose of any interest in land acquired on or before July 1, 1998.

C. The corporate franchise of any domestic corporation governed by the Oklahoma General Corporation Act 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 shall be vacated promptly in the manner prescribed by Section ~~104~~ 1104 of this ~~act~~ title, if the corporation has persistently violated the provisions of subsection A of Section 951 of this title.

D. 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.

~~E. This act shall not require any foreign or domestic corporation to dispose of any property acquired on or before June 1, 1971.~~

~~F.~~ Any farming or ranching corporation which violates the provisions of Section 951 of this title shall be fined an amount not to exceed Five Hundred Dollars (\$500.00). Any other person, corporation or entity who knowingly violates such section shall be deemed guilty of a misdemeanor.

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 Corporations Act shall not apply ~~where~~ if a corporation, either domestic or foreign:

1. Engages in research and/or feeding arrangements or operations concerned with the feeding of livestock or poultry, but only to the extent of such research and/or feeding arrangements or such livestock or poultry operations; ~~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 breeding or feeding livestock or poultry which are not selected or sold as breeding stock; ~~or~~

3. Engages in corporate poultry and/or confinement or corporate 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 production in any county which has voted favorably pursuant to Section 5 of this act either by county resolution or by the electorate; ~~or~~

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

5. ~~Whose~~ Has a corporate purpose which is charitable or eleemosynary; or

6. 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. For the purposes of the Oklahoma Farming or Ranching Business Corporations Act:

1. "Corporate poultry confinement" means the land, structures, facilities and related equipment used for housing, breeding, laying of eggs, hatching of poultry, feeding or processing of poultry in a restricted environment and the providing of supervisory, technical and other assistance to any persons performing such services on behalf of the corporation. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production or other authorized uses and for isolation of the facility to reasonably protect the confined poultry from exposure to disease;

2. "Poultry" means chickens, turkeys, ducks, geese or other fowl; and

3. "Corporate swine production" means the land, structures, facilities and related equipment used for housing, breeding, farrowing, feeding and processing of swine and the providing of supervisory, technical and other assistance to any persons performing such services on behalf of the corporation. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes in environmentally sound amounts for crop production or other authorized uses and for isolation of the facility to reasonably protect the confined animals from exposure to disease.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 954.1 of Title 18, unless there is created a duplication in numbering, reads as follows:

A. 1. The board of county commissioners, by resolution, may authorize corporate poultry confinement or corporate swine production to be established within the county. Such resolution shall be published once each week for two (2) consecutive weeks in the official county newspaper. The resolution shall take effect sixty (60) days after final publication unless a valid petition in opposition to the resolution is filed.

2. If within sixty (60) days of the final publication of the resolution, a valid protest petition to submit the resolution to the qualified voters of the county is signed by qualified electors of the county equal in number to not less than five percent (5%) of the electors of the county who voted for the office of Secretary of State at the last preceding general election at which such office was elected, and is filed with the county election officer, the county election officer shall submit the question of whether corporate poultry confinement or corporate swine production shall be allowed to be established in such county at the next statewide or countywide regular or special election.

B. 1. The board of county commissioners, upon a petition filed in accordance with paragraph 2 of this subsection shall submit to the qualified electors of the county a proposition to permit corporate swine production or corporate poultry confinement to be established within the county.

2. A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified electors of the county equal in number to not less than five percent (5%) of the electors of the county who voted for the office of Secretary of State at the last preceding general election at which such office was elected. The following shall appear on the petition:

"We request an election to determine whether corporate poultry confinement and/or corporate swine production shall be allowed to be established in \_\_\_\_\_ County, pursuant to the Oklahoma Farming or Ranching Business Corporations Act."

3. Upon the submission of a valid petition calling for an election pursuant to this subsection, the county election officer shall submit the question of whether corporate swine production or corporate poultry confinement shall be allowed to be established in such county at the next statewide or countywide regular or special election which occurs more than sixty (60) days after the petition is filed with the county election officer.

C. If a majority of the votes cast and counted are in opposition to allowing corporate swine production facilities or corporate poultry confinement facilities to be established in such county, the county election officer shall transmit a copy of the result to the Secretary of State who shall publish in The Oklahoma Register and in a paper of general circulation in the county where the election was held the result of such election with a statement

that corporate swine production or corporate poultry confinement is not allowed to be established in such county.

D. If a majority of the votes cast and counted is in favor of the proposition, the county election officer shall transmit a copy of the result to the Secretary of State who shall publish in The Oklahoma Register and in a paper of general circulation in the county where the election was held the result of such election with a statement that corporate swine production or corporate poultry confinement is allowed to be established in such county.

E. The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question-submitted elections of the county.

SECTION 6. 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.

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