

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2809

By: Maddux

AS INTRODUCED

An Act relating to agriculture; creating the Oklahoma Right-to-Farm Act; providing for state policy and purpose; defining terms; prohibiting certain actions; specifying conditions; authorizing certain actions; providing for liability; providing for recovery of certain damages; providing for applicability of governmental requirements; setting certain limitations, constructions and restrictions; prohibiting certain actions; amending 50 O.S. 1991, Section 1, which relates to nuisances; modifying terms and definitions; providing for controlling act; repealing 50 O.S. 1991, Section 1.1, which relates to definitions and certain presumptions; providing for codification; and providing an effective date.

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 2051 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 6 of this act shall be known and may be cited as the "Oklahoma Right-to-Farm Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2052 of Title 2, unless there is created a duplication in numbering, reads as follows:

It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food, fiber and other agricultural products. It is the purpose of the Oklahoma Right-to-Farm Act to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or deemed to be a nuisance. It is the finding of the Legislature of this state that agricultural operations and activities are presumed reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2053 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Right-to-Farm Act:

1. "Agricultural operation or activity" includes but is not limited to cultivating the soil, producing crops for human food or animal feed, planting seed, and for the production of fibers, silviculture, floriculture, viticulture, and horticulture; raising, keeping, growing or feeding of livestock or poultry; planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;

2. "Established date of operation" means the date on which the agricultural operation or activity commenced operation. If the physical facilities of the agricultural operation or activity are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established

date of operation" established as of the date of commencement of the expanded operation or activity, and the commencement of expanded operation or activity shall not divest the agricultural operation or activity of a previously established date of operation;

3. "Governmental requirement" includes any rules, ordinances, zoning, or other requirements and restrictions enacted or promulgated by cities, counties, or other municipal corporations who presently have or may in the future be granted the power to enact or promulgate such; and

4. "Effective date of the requirement" means the date on which the government requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation or activity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2054 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For agricultural operations or activities which have an established date of operation on or prior to the effective date of this act, no nuisance actions shall be brought against such operation or activity later than six (6) months after the effective date of this act if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the effective date of this act.

B. For agricultural operations or activities which have a date of operation established after the effective date of this act, no nuisance action shall be brought against an agricultural operation or activity which has been in operation for one (1) year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation; provided, however, that nothing in the Oklahoma Right-to-Farm Act shall in any way restrict or impede

the authority of this state to protect the public health, safety, and welfare or the authority of a municipality to enforce state law.

C. Any person who brings an unsuccessful nuisance action for damages or injunctive relief against an agricultural operation or activity specified in subsection A or B of this section shall be liable to the agricultural operator for all costs and expenses incurred in defense of such action, including but not limited to attorney fees, court costs, travel, and other related incidental expenses incurred in the defense of such litigation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2055 of Title 2, unless there is created a duplication in numbering, reads as follows:

A governmental requirement of a city shall not apply to any agricultural operation or activity situated outside the corporate boundaries of such city on the effective date of this act. If an agricultural operation or activity so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of such city shall not apply unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation or activity from the danger of explosion, flooding, vermin, physical injury, contagious disease, removal of lateral or subadjacent support, contamination of water supplies, radiation, storage of toxic materials, discharge of firearms, or traffic hazards. This section shall be construed to maintain to the limited degree set forth herein the previous authority over nonconforming uses, but not to expand such previous authority.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2056 of Title 2, unless there is created a duplication in numbering, reads as follows:

Recodification of a municipal ordinance shall not change the original effective date to the extent of the original standards and requirements.

SECTION 7. AMENDATORY 50 O.S. 1991, Section 1, is amended to read as follows:

Section 1. A. A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

~~First~~ 1. Annoys, injures or endangers the comfort, repose, health, or safety of others; ~~or~~

~~Second~~ 2. Offends decency; ~~or~~

~~Third~~ 3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or highway; or

~~Fourth~~ 4. In any way renders other persons insecure in life, or in the use of property, ~~provided, this section shall not apply to preexisting agricultural activities.~~

B. Any public or private nuisance actions relating to agricultural operations or activities shall be governed by the Oklahoma Right-to-Farm Act.

C. For purposes of this section the term "agricultural operation or activity" includes but is not limited to the following activities: cultivating the soil, producing crops for human food or animal feed, planting seed, and for the production of fibers, silviculture, floriculture, viticulture, and horticulture; raising, keeping, growing or feeding of livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

SECTION 8. REPEALER 50 O.S. 1991, Section 1.1, is hereby repealed.

SECTION 9. This act shall become effective November 1, 1998.

46-2-8869

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