

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1150

By: Pope (Clay)

AS INTRODUCED

An Act relating to corporations; 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. 1998, 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; 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. 1998, 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  
subsection;

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.

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. 1998, 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, 1999, 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, 1999, 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, 1999, 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, 1999, 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, 1999, 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, 1999, 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, 1999, 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, 1999, 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 ~~404~~ 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, 1999.

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. 1998, 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. RECODIFICATION 18 O.S. 1991, Sections 955, as last amended by Section 3 of this act, 954, as last amended by 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 9. REPEALER 18 O.S. 1991, Sections 951 and 956, are hereby repealed.

SECTION 10. This act shall become effective July 1, 1999.

SECTION 11. 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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