

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1486

By: Maddux (Elmer) of the
House

and

Kerr of the Senate

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, Sections 1 and 1.1, which relate to nuisances; modifying terms and definitions; providing for controlling act; 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.

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" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, planting seed, and for the production of fibers, floriculture, viticulture, and horticulture; raising or keeping 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;

2. "Established date of operation" means the date on which the agricultural operation commenced operation. If the physical facilities of the agricultural operation 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, and the commencement of expanded operation shall not divest the agricultural operation of a previously established date of operation;

3. "Governmental requirement" includes any rules, regulations, 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.

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. No nuisance action shall be brought against an agricultural operation which has lawfully 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.

B. Any person who brings a nuisance action for damages or injunctive relief against an agricultural operation which has existed for one (1) year or more prior to the date that such action is instituted and any person, firm, or corporation who violates the provisions of subsection A 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's fees, court costs, travel, and other related incidental expenses incurred in the defense of such litigation.

C. The provisions of this section shall not affect or defeat the right of any person, firm, or corporation to recover damages for

any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any federal, state, or local statute or governmental regulation which applies to that agricultural operation or portion thereof.

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. From and after the effective date of this act, the applicability of governmental requirements shall be as follows: A governmental requirement of a political subdivision of the state other than a city:

1. Shall apply to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;

2. Shall not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement; and

3. Shall apply to an agricultural operation if the governmental requirement was in effect and was applicable to such operation prior to the effective date of this act.

B. A governmental requirement of a city shall not apply to any agricultural operation situated outside the corporate boundaries of such city on the effective date of this act. If an agricultural operation 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 from the danger of explosion, flooding, vermin, insects, 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 shall be governed by the Oklahoma Right-to-Farm Act.

SECTION 8. AMENDATORY 50 O.S. 1991, Section 1.1, is amended to read as follows:

Section 1.1 ~~A.~~ As defined in this act:

~~1. "Agricultural activities" shall include, but not be limited to, the growing or raising of horticultural and viticultural crops,~~

~~berries, poultry, livestock, grain, mint, hay and dairy products;~~
and ~~2. "Farmland" shall include, but not be limited to, land~~
~~devoted primarily to production of livestock or agricultural~~
~~commodities.~~

~~B. Agricultural activities conducted on farm or ranch land, if~~
~~consistent with good agricultural practices and established prior to~~
~~nearby nonagricultural activities, are presumed to be reasonable and~~
~~do not constitute a nuisance unless the activity has a substantial~~
~~adverse affect on the public health and safety.~~

~~If that agricultural activity is undertaken in conformity with~~
~~federal, state and local laws and regulations, it is presumed to be~~
~~good agricultural practice and not adversely affecting the public~~
~~health and safety "agricultural operation" includes but is not~~
~~limited to the following activities: cultivating the soil,~~
~~producing crops for human food, animal feed, planting seed, and for~~
~~the production of fibers, floriculture, viticulture, and~~
~~horticulture; raising or keeping 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 9. This act shall become effective September 1, 1993.

44-1-5046

KSM