

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 HOUSE BILL 4118

By: Hardin

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6 AS INTRODUCED

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8 An Act relating to agriculture; enacting the Farmer
9 Protection Act; providing purpose; amending 2 O.S.
10 2021, Sections 10-9.7, as amended by Section 1,
11 Chapter 239, O.S.L. 2022, and 10-9.11 (2 O.S. Supp.
12 2023, Section 10-9.7), which relate to the Oklahoma
13 Registered Poultry Feeding Operations Act;
14 establishing the exclusive enforcement jurisdiction
15 of the Oklahoma Department of Agriculture, Food, and
16 Forestry for acts or omissions relating to the
17 Oklahoma Registered Poultry Feeding Operations Act;
18 creating a presumption that compliance with a current
19 Nutrient Management Plan insulates poultry growers,
20 operators, integrators, and waste applicators from
21 any private right of action or any collateral
22 enforcement; establishing that the Oklahoma
23 Registered Poultry Feeding Operations Act grants
24 statutory immunity from nuisance liability; providing
-- for noncodification; providing for codification; and
declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

A. This act shall be known and may be cited as the Farmer
Protection Act.

B. The Legislature finds that:

1 1. Oklahoma farmers are essential to the State of Oklahoma's
2 economy;

3 2. Farmers' ability to feed both Oklahomans and the nation must
4 be protected while also preserving the state's environmental
5 resources; and

6 3. This act must be clarified to protect farmers from overly
7 burdensome and wholly unnecessary litigation arising from activities
8 and operations intended to be expressly authorized by the state and
9 insulated from private rights of action.

10 SECTION 2. AMENDATORY 2 O.S. 2021, Section 10-9.7, as
11 amended by Section 1, Chapter 239, O.S.L. 2022 (2 O.S. Supp. 2023,
12 Section 10-9.7), is amended to read as follows:

13 Section 10-9.7 A. All poultry feeding operations shall utilize
14 Best Management Practices and shall meet the conditions and
15 requirements established by subsection B of this section and by
16 rules promulgated by the State Board of Agriculture pursuant to the
17 Oklahoma Registered Poultry Feeding Operations Act.

18 B. ~~The criteria for~~ Best Management Practices shall be
19 promulgated by rules by the Board and shall include, but not be
20 limited to, the following when developing Nutrient Management Plans:

21 1. ~~There shall be no discharge of poultry waste to waters of~~
22 ~~the state;~~

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1 ~~2.~~ Stored poultry waste shall be isolated from outside surface
2 drainage by covers, ditches, dikes, berms, terraces or other such
3 structures;

4 ~~3.~~ 2. No waters of the state shall come into direct contact
5 with the poultry confined on the poultry feeding operation; and

6 ~~4.~~ 3. Poultry waste handling, treatment, management, and
7 removal shall:

8 ~~a. not create an environmental or a public health hazard,~~

9 ~~b. not result in the contamination of waters of the~~
10 ~~state, and~~

11 ~~c.~~ conform to such other handling, treatment and
12 management and removal requirements deemed necessary
13 by the Oklahoma Department of Agriculture, Food, and
14 Forestry to implement the Oklahoma Registered Poultry
15 Feeding Operations Act and rules promulgated pursuant
16 thereto.

17 The rules promulgated by the Board pursuant to this section
18 shall provide for exceptions to the storage requirements for poultry
19 waste in emergency situations. Such exceptions shall include but
20 not be limited to allowing a contract poultry grower to take such
21 actions as are necessary to meet requirements imposed on a grower by
22 an integrator. In such reasonable situations growers shall be
23 required to take all actions feasible to prevent pollution from
24 stored poultry waste.

1 C. Every poultry feeding operation shall have a Nutrient
2 Management Plan which shall include at a minimum:

3 1. A description of poultry waste handling procedures and
4 availability of equipment and type of equipment to be used;

5 2. The calculations and assumptions used for determining land-
6 application rates if land application is applicable;

7 3. All nutrient analysis data for soil and poultry waste
8 testing;

9 4. Legal description and latitude and longitude of lands to be
10 used by an operation for land application;

11 5. Land-application rates of poultry waste shall be based on
12 the available nitrogen and phosphorous content of the poultry waste
13 and shall provide controls for runoff and erosion as appropriate for
14 site conditions;

15 6. The procedures documented in the Nutrient Management Plan
16 shall ensure that the handling and utilization of poultry waste
17 complies with the following requirements:

18 a. adequate poultry waste storage shall be provided
19 consistent with rules promulgated by the Oklahoma
20 Department of Agriculture, Food, and Forestry pursuant
21 to subsection B of this section,

22 b. poultry waste shall not be applied to land when the
23 ground is saturated or during rainfall events.

24 Poultry waste shall not be applied to land when the
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1 ground is frozen except in conformance with the
2 Nutrient Management Plan,

3 c. poultry waste shall only be applied to suitable land
4 at appropriate times and rates. ~~Discharge or runoff~~
5 ~~of waste from the application site is prohibited.~~

6 Timing and rate of applications shall be based on
7 assimilation capacity of the soil profile, assuming
8 usual nutrient losses, expected precipitation, and
9 soil conditions, and

10 d. poultry waste application shall be prohibited on land
11 subject to excessive erosion;

12 7. Records shall be maintained of all poultry wastes applied on
13 land owned or controlled by the operator, and sold or given to other
14 persons:

15 a. if the poultry waste is sold or given to other persons
16 for land application or other use, the poultry feeding
17 operation shall maintain a log of: date of removal
18 from the poultry feeding operation; name of recipient
19 the poultry waste is sold or given to; and amount in
20 wet tons, dry tons or cubic yards of poultry waste
21 removed from the poultry feeding operation, and

22 b. the poultry feeding operation shall make available to
23 the recipient any nutrient sample analysis of the
24 poultry waste from that year;

1 8. Any analysis required by the provisions of the Oklahoma
2 Registered Poultry Feeding Operations Act or rules promulgated
3 thereto shall be performed by a qualified environmental testing
4 laboratory certified by the Department of Environmental Quality and
5 approved by the Oklahoma Department of Agriculture, Food, and
6 Forestry; and

7 9. Such other information deemed necessary by the Oklahoma
8 Department of Agriculture, Food, and Forestry to administer the
9 provisions of the Oklahoma Registered Poultry Feeding Operations Act
10 and rules promulgated pursuant thereto.

11 D. 1. The Nutrient Management Plan for new or expanding
12 poultry feeding operations submitted after July 1, 1998, shall be
13 prepared by the operator or designee of the operator.

14 2. After the plan is submitted to the Oklahoma Department of
15 Agriculture, Food, and Forestry for review and approval if the
16 Department determines that a submitted plan needs or requires any
17 corrections or modifications, the Department shall return the
18 Nutrient Management Plan to the operator for corrections.

19 3. For a renewal, if the Department determines the Nutrient
20 Management Plan needs or requires corrections or modifications, the
21 Department shall make appropriate corrections, approve the plan and
22 notify the poultry feeding operation of the modifications.

23 E. 1. Except as otherwise provided in this subsection, a
24 Nutrient Management Plan for every poultry feeding operation shall
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1 be renewed and an updated plan shall be submitted to the Oklahoma
2 Department of Agriculture, Food, and Forestry every six (6) years
3 from the date the initial or previous plan was submitted.

4 2. The operator shall have the option to submit the renewed or
5 updated plan through the Department's website or a printable online
6 form designed by the Department.

7 3. A current operator may submit a one-page amendment to the
8 most recently submitted plan in lieu of a renewal plan through the
9 Department's website, if applicable. Poultry feeding operations
10 submitting an amendment pursuant to this subsection shall still be
11 subject to the soil and poultry waste testing requirements under
12 subsections F and G of this section. The amendment shall contain
13 the following statements:

- 14 a. no changes in the Department's promulgated standards
15 for land application of poultry waste have occurred
16 since the most recently submitted Nutrient Management
17 Plan,
- 18 b. there has been no change to the number of poultry
19 housed since the most recently submitted Nutrient
20 Management Plan,
- 21 c. there has been no expansion in the poultry feeding
22 operation since the most recently submitted Nutrient
23 Management Plan, and
- 24 d. the entirety of the poultry waste is:

1 (1) removed off-site as provided in the poultry
2 feeding operation's annual report, as required by
3 subsection J of this section, and will continue
4 to be removed off-site for the next six (6)
5 years, or

6 (2) land-applied and will continue to be land-applied
7 for the next six (6) years.

8 F. Every poultry feeding operation located in a non-nutrient-
9 limited watershed and non-nutrient-vulnerable groundwaters shall
10 perform soil testing on each land-application area and poultry waste
11 testing at least once every three (3) years to determine:

- 12 1. Soil pH and plant-available nutrients including, at a
13 minimum, nitrogen, phosphorous and potassium;
- 14 2. Poultry waste nutrient concentrations and moisture; and
- 15 3. Application rate based upon the Department's standards for
16 land application for poultry waste as promulgated by rules.

17 G. Every poultry feeding operation located in a nutrient-
18 limited watershed and nutrient-vulnerable groundwater shall perform
19 an annual soil test on each land-application area prior to the first
20 application of the calendar year. Poultry waste testing shall be
21 performed annually prior to the first application of the calendar
22 year. Soil and poultry waste testing shall be performed to
23 determine:

1 1. Soil pH and plant-available nutrients including at least
2 nitrogen, phosphorous and potassium;

3 2. Poultry waste nutrient concentrations and moisture; and

4 3. Application rate based upon the Department's standards for
5 land application of poultry waste as promulgated by rules.

6 H. 1. Soil and poultry waste analysis data shall be retained
7 by the poultry feeding operation for a minimum of six (6) years.

8 2. All soil and poultry waste analysis data shall be dated
9 prior to land application.

10 I. 1. Poultry feeding operations shall develop a plan for the
11 disposal of carcasses associated with normal mortality.

12 2. In the event there is an outbreak of a major disease or
13 other emergency resulting in deaths significantly higher than normal
14 mortality rates, the Oklahoma Department of Agriculture, Food, and
15 Forestry may approve, in writing, an alternate method of disposal of
16 carcasses or the storage of poultry waste during the emergency
17 period.

18 J. Every poultry feeding operation shall file by September 1 of
19 each year an annual report with the Department regarding all poultry
20 waste removed from or land-applied by the facility for the period
21 from July 1 of the previous year through June 30 of that year. The
22 report shall contain the following information:

23 1. The date and amount of poultry waste removed from or land-
24 applied at the facility;

1 2. The type of poultry waste removed or land-applied, whether a
2 cake out, full clean out, in-house windrow or compost, poultry waste
3 stack shed, or other type;

4 3. The county and, if applicable, the name of the Nutrient
5 Limited Watershed where the poultry waste was produced; and

6 4. The location where the poultry waste is removed to:

7 a. if land-applied on-site, provide the following:

8 (1) the date of the land application,

9 (2) the total amount of poultry waste land-applied in
10 wet tons, dry tons, or cubic yards,

11 (3) the name, mailing address, and telephone number
12 of the poultry waste applicator, and

13 (4) the number of acres under the control of the
14 poultry feeding operation for land application of
15 poultry waste, or

16 b. if removed off-site, provide the following:

17 (1) the date of the removal off-site,

18 (2) the amount of poultry waste removed in wet tons,
19 dry tons, or cubic yards,

20 (3) the name, mailing address, and telephone number
21 of the person the poultry waste is sold or
22 transferred to,
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1 (4) the name, mailing address, telephone number, and
2 poultry waste applicator license number of the
3 poultry waste applicator, if known, and

4 (5) the name, mailing address, and telephone number
5 of the hauler of the poultry waste.

6 SECTION 3. AMENDATORY 2 O.S. 2021, Section 10-9.11, is
7 amended to read as follows:

8 Section 10-9.11 A. 1. Any person violating the provisions of
9 the Oklahoma Registered Poultry Feeding Operations Act shall, upon
10 conviction, be guilty of a misdemeanor and may be punished by a fine
11 not to exceed Two Hundred Dollars (\$200.00).

12 2. The Attorney General or the district attorney of the
13 appropriate district court of Oklahoma may bring an action in a
14 court of competent jurisdiction for the criminal prosecution of a
15 violation by any person of a provision of the Oklahoma Registered
16 Poultry Feeding Operations Act or any rule promulgated thereunder.

17 B. 1. In addition to the criminal penalties specified by this
18 section, the Oklahoma Department of Agriculture, Food, and Forestry
19 may:

- 20 a. assess an administrative penalty of not more than Two
21 Hundred Dollars (\$200.00) per day of noncompliance, or
22 b. bring an action for injunctive relief granted by a
23 district court.

1 2. A district court may grant injunctive relief to prevent a
2 violation of, or to compel compliance with, any of the provisions of
3 the Oklahoma Registered Poultry Feeding Operations Act or any rule
4 promulgated thereunder or order, registrations and certificates
5 issued pursuant to the Oklahoma Registered Poultry Feeding
6 Operations Act.

7 3. Nothing in this section shall preclude the Department from
8 seeking penalties in district court in the maximum amount allowed by
9 law. The assessment of penalties in an administrative enforcement
10 proceeding shall not prevent the subsequent assessment by a court of
11 the maximum criminal penalties for violations of the Oklahoma
12 Registered Poultry Feeding Operations Act.

13 4. Any person assessed an administrative penalty may be
14 required to pay, in addition to such penalty amount and interest
15 thereon, attorney fees and costs associated with the collection of
16 such penalties.

17 C. 1. Any action for injunctive relief to redress or restrain
18 a violation by any person of the Oklahoma Registered Poultry Feeding
19 Operations Act, or for any rule promulgated thereunder, or order
20 issued pursuant thereto, or recovery of any administrative penalty
21 assessed pursuant to the Oklahoma Registered Poultry Feeding
22 Operations Act may be brought by:

- 23 a. the district attorney of the appropriate district
24 court of the State of Oklahoma,
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1 b. the Attorney General on behalf of the State of
2 Oklahoma, or

3 c. the Department on behalf of the State of Oklahoma.

4 2. The court shall have jurisdiction to determine the action,
5 and to grant the necessary or appropriate relief, including but not
6 limited to mandatory or prohibitive injunctive relief, ~~interim~~
7 ~~equitable relief, and punitive damages.~~

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

11 D. Except as otherwise provided by law, administrative and
12 civil penalties shall be paid into the State Department of
13 Agriculture Regulation Revolving Fund.

14 E. For the purposes of the Oklahoma Registered Poultry Feeding
15 Operations Act, each day upon which a violation is committed or is
16 permitted to continue shall be deemed a separate offense.

17 F. Any contract poultry grower determined after notice and
18 opportunity for a hearing by the Department as flagrantly
19 disregarding Best Management Practices shall result in the
20 Department notifying the integrator in writing.

21 G. The Department shall notify all integrators of any
22 violations assessed against an operator who is under a contract
23 growing arrangement with that integrator and, upon the written
24 request of the integrator, notify that integrator of all violations
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1 assessed an operator with whom the integrator contemplates entering
2 into a contract.

3 H. In addition to other penalties as may be imposed by law, any
4 person who knowingly makes any false statement, representation or
5 certification form, notice or report, or who knowingly renders
6 inaccurate any monitoring device or method required to be maintained
7 by any rule promulgated by the Board, shall, upon conviction, be
8 guilty of a misdemeanor and may be subject to a fine of not more
9 than Five Thousand Dollars (\$5,000.00) for each such violation.

10 I. Land application of poultry litter in compliance with a
11 current Nutrient Management Plan shall not be the basis for criminal
12 or civil liability in Oklahoma, whether relating to that single
13 plan, or aggregated with the application of poultry waste pursuant
14 to other Nutrient Management Plans; nor shall an administrative
15 violation be the basis for a criminal or civil action; nor shall any
16 alleged violation be the basis for any private right of action nor
17 any action other than enforcement of the terms of the Nutrient
18 Management Plan and other sections of this title by the Oklahoma
19 Department of Agriculture, Food, and Forestry. A current plan means
20 a plan issued by the State of Oklahoma and not yet revoked or
21 rescinded by the state or suspended by a more recent plan.

22 1. This provision shall apply both directly and vicariously to
23 the integrator to whom a contract poultry grower contracts, as well
24 as to any poultry grower, operator, contractor of or employee for a
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1 certified poultry waste applicator or a poultry waste owner's agent
2 so long as the land application is performed pursuant to and in
3 compliance with the current Nutrient Management Plan.

4 2. This provision shall apply both prospectively and
5 retroactively to any civil or criminal actions.

6 3. Compliance with a current Nutrient Management Plan, as
7 determined by the Oklahoma Department of Agriculture, Food, and
8 Forestry, shall create a presumption that no violation of this
9 section has occurred and shall insulate the poultry grower,
10 integrator, and waste applicator from any private right of action
11 and shall constitute "express authority" for purposes of this title
12 and Section 4 of Title 50 of the Oklahoma Statutes.

13 4. Nothing in this subsection shall restrict the Oklahoma
14 Department of Agriculture, Food, and Forestry's exclusive authority
15 from enforcing the terms of Nutrient Management Plans or its
16 authority to enforce the Oklahoma Registered Poultry Feeding
17 Operations Act and the Oklahoma Certified Poultry Waste Applicators
18 Act.

19 SECTION 4. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.

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