

The Senate Committee on Agriculture and Consumer Affairs offered the following substitute to HB 545:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to
2 treatment of agricultural facilities and operations and forest land as nuisances, so as to
3 provide for legislative intent; to remove definitions; to limit the circumstances under which
4 agricultural facilities and operations may be sued for a nuisance; to provide for a statute of
5 limitations; to provide for attorneys' fees; to provide for a short title; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 This Act shall be known and may be cited as the "Georgia Right to Farm Act of 2020."
9

SECTION 2.

10 Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to treatment of
11 agricultural facilities and operations and forest land as nuisances, is amended by revising said
12 Code section to read as follows:
13

14 "41-1-7.

15 (a) It is the declared policy of the state to conserve, protect, and encourage the
16 development and improvement of its agricultural and forest land and facilities for the
17 production or distribution of food and other agricultural products, including without
18 limitation forest products. ~~When nonagricultural land uses extend into agricultural or~~
19 ~~agriculture-supporting industrial or commercial areas or forest land or when there are~~
20 ~~changed conditions in or around the locality of an agricultural facility or agricultural~~
21 ~~support facility, such operations often become Agricultural operations and facilities,~~
22 ~~including support facilities and forest land, are often~~ the subject of nuisance actions when
23 nonagricultural land uses are also located in agricultural areas. As a result, such facilities
24 are sometimes forced to cease operations. ~~Many, and many~~ others are discouraged from
25 making new investments in agricultural support facilities, making or farm improvements,

26 or adopting new related technology or methods. It is the purpose of this Code section to
 27 reduce losses of the state's agricultural and forest land resources by limiting the
 28 circumstances under which agricultural facilities and operations or agricultural support
 29 facilities may be deemed to be a nuisance.

30 (b) As used in this Code section, the term:

31 ~~(1) 'Agricultural area' means any land which is, or may be, legally used for an~~
 32 ~~agricultural operation under applicable zoning laws, rules, and regulations at the time of~~
 33 ~~commencement of the agricultural operation of the agricultural facility at issue and~~
 34 ~~throughout the first year of operation of such agricultural facility. Any land which is not~~
 35 ~~subject to zoning laws, rules, and regulations at the time of commencement of an~~
 36 ~~agricultural operation of an agricultural facility and throughout the first year of operation~~
 37 ~~of such agricultural facility shall be deemed an 'agricultural area' for purposes of this~~
 38 ~~Code section.~~

39 ~~(2)~~ 'Agricultural facility' includes, but is not limited to, any land, building, structure,
 40 pond, impoundment, appurtenance, machinery, or equipment which is used for the
 41 commercial production or processing of crops, livestock, animals, poultry, honeybees,
 42 honeybee products, livestock products, poultry products, timber, forest products, or
 43 products which are used in commercial aquaculture. Such term shall also include any
 44 farm labor camp or facilities for migrant farm workers.

45 ~~(3)~~(2) 'Agricultural operation' means:

- 46 (A) The plowing, tilling, or preparation of soil at an agricultural facility;
- 47 (B) The planting, growing, fertilizing, harvesting, or otherwise maintaining of crops
 48 as defined in Code Section 1-3-3 and also timber and trees that are grown for purposes
 49 other than for harvest and for sale;
- 50 (C) The application of pesticides, herbicides, or other chemicals, compounds, or
 51 substances to crops, weeds, or soil in connection with the production of crops, timber,
 52 livestock, animals, or poultry;
- 53 (D) The breeding, hatching, raising, producing, feeding, keeping, slaughtering, or
 54 processing of livestock, hogs, equines, chickens, turkeys, poultry or other fowl
 55 normally raised for food, mules, cattle, sheep, goats, dogs, rabbits, or similar farm
 56 animals for commercial purposes;
- 57 (E) The production and keeping of honeybees, the production of honeybee products,
 58 and honeybee processing facilities;
- 59 (F) The production, processing, or packaging of eggs or egg products;
- 60 (G) The manufacturing of feed for poultry or livestock;
- 61 (H) The rotation of crops, including without limitation timber production;
- 62 (I) Commercial aquaculture;

63 (J) The application of existing, changed, or new technology, practices, processes, or
64 procedures to any agricultural operation; and

65 (K) The operation of any roadside market.

66 ~~(3.1)~~(3) 'Agricultural support facility' means any food processing plant or forest products
67 processing plant together with all related or ancillary activities, including trucking;
68 provided, however, that this term expressly excludes any rendering plant facility or
69 operation.

70 ~~(4)~~ 'Changed conditions' means any one or more of the following:

71 ~~(A) Any change in the use of land in an agricultural area or in an industrial or
72 commercial area affecting an agricultural support facility;~~

73 ~~(B) An increase in the magnitude of an existing use of land in or around the locality of
74 an agricultural facility or agricultural support facility and includes, but is not limited to,
75 urban sprawl into an agricultural area or into an industrial or commercial area in or
76 around the locality of such facility, or an increase in the number of persons making any
77 such use, or an increase in the frequency of such use; or~~

78 ~~(C) The construction or location of improvements on land in or around the locality of
79 an agricultural facility or agricultural support facility closer to such facility than those
80 improvements located on such land at the time of commencement of the agricultural or
81 agricultural support operation or the agricultural facility or agricultural support facility
82 at issue and throughout the first year of operation of said facility.~~

83 ~~(4.1)~~(4) 'Food processing plant' means a commercial operation that manufactures,
84 packages, labels, distributes, or stores food for human consumption and does not provide
85 food directly to a consumer.

86 ~~(4.2)~~(5) 'Forest products processing plant' means a commercial operation that
87 manufactures, packages, labels, distributes, or stores any forest product or that
88 manufactures, packages, labels, distributes, or stores any building material made from
89 gypsum rock.

90 ~~(4.3)~~(6) 'Rendering plant' has the meaning provided by Code Section 4-4-40.

91 ~~(5)~~ 'Urban sprawl' means either of the following or both:

92 ~~(A) With regard to an agricultural area or agricultural operation:~~

93 ~~(i) The conversion of agricultural areas from traditional agricultural use to residential
94 use; or~~

95 ~~(ii) An increase in the number of residences in an agricultural area which increase is
96 unrelated to the use of the agricultural area for traditional agricultural purposes.~~

97 ~~(B) With regard to an agricultural support facility:~~

98 ~~(i) The conversion of industrial or commercial areas to residential use; or~~

~~(ii) An increase in the number of residences in an industrial or commercial area which increase is unrelated to the use of the industrial or commercial area for traditional industrial or commercial purposes.~~

(c) No nuisance action shall be filed against any agricultural facility, agricultural operation, any agricultural operation at an agricultural facility, agricultural support facility, or any operation at an agricultural support facility ~~shall be or shall become a nuisance, either public or private, as a result of changed conditions in or around the locality of such facility or operation if the facility or operation has been in operation for one year or more unless the plaintiff legally possesses the real property affected by the conditions alleged to be a nuisance, such real property is located within five miles of the source of the activity alleged to cause the nuisance, the alleged nuisance occurs within two years of the date of operation of an agricultural operation or facility, and the action is filed within two years after the right of action accrues.~~ The provisions of this subsection shall not apply when a nuisance results from the negligent, improper, or illegal operation of any such agricultural facility or operation.

(d) For purposes of this Code section, the established date of operation is the date on which ~~an agricultural operation or agricultural support facility~~ a facility or operation named in subsection (c) of this Code section commenced operation. ~~If the physical facilities of the agricultural operation or the agricultural support facility are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation or agricultural support facility of a previously established date of operation.~~

(e) Except as provided in subsection (f) of this Code section, the following fundamental changes do not divest an agricultural operation or facility named in subsection (c) of this Code section of a previously established date of operation:

(1) The addition or expansion of physical facilities;

(2) The adoption of new technology;

(3) A change in size of an operation or facility;

(4) An interruption in operations for a period of five years or less;

(5) A change in the type of operation;

(6) The rebuilding or replacement of a physical facility which has been razed or destroyed as a result of routine maintenance, facility upgrades, or a natural disaster; and

(7) A transfer of ownership.

(f)(1) Any change described in paragraphs (1) through (5) of subsection (e) of this Code section that directly causes or materially contributes to the alleged nuisance and requires permitting or other approval by the Georgia Department of Agriculture, the Georgia

136 Department of Natural Resources, or any federal agency, or requires a zoning decision
137 by a local government, shall create a newly established date of operation.

138 (2) Paragraph (1) of this subsection shall not apply to renewals of existing permits or
139 approvals.

140 (3) Newly established dates of operation under paragraph (1) of this subsection shall only
141 apply to changed aspects or areas of the agricultural operation or facility to which the
142 new permit or approval applies.

143 (g) In a nuisance action authorized by this Code section, the court shall award costs and
144 expenses, including reasonable attorneys' fees, to:

145 (1) The agricultural facility, agricultural operation, agricultural operation at an
146 agricultural facility, agricultural support facility, or operation at an agricultural support
147 facility when the court finds such facility or operation was not subject to a cause of action
148 in nuisance pursuant to this Code section and the nuisance action was frivolous or
149 malicious; or

150 (2) The plaintiff when the court finds that such facility or operation was subject to a
151 cause of action in nuisance pursuant to this Code section and such facility or operation
152 asserted an affirmative defense in the nuisance action that was frivolous or malicious."

153 **SECTION 3.**

154 All laws and parts of laws in conflict with this Act are repealed.