

SENATE SUBSTITUTE TO HB 545:

AS PASSED SENATE

**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 no preemption of federal regulations;
6 to provide for a short title; to provide for related matters; to provide for an effective date; to
7 repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

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

11 **SECTION 2.**

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

15 "41-1-7.

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

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

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

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

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

46 (3)(2) 'Agricultural operation' means:

47 (A) The plowing, tilling, or preparation of soil at an agricultural facility;

48 (B) The planting, growing, fertilizing, harvesting, or otherwise maintaining of crops
 49 as defined in Code Section 1-3-3 and also timber and trees that are grown for purposes
 50 other than for harvest and for sale;

51 (C) The application of pesticides, herbicides, or other chemicals, compounds, or
 52 substances to crops, weeds, or soil in connection with the production of crops, timber,
 53 livestock, animals, or poultry;

54 (D) The breeding, hatching, raising, producing, feeding, keeping, slaughtering, or
 55 processing of livestock, hogs, equines, chickens, turkeys, poultry or other fowl
 56 normally raised for food, mules, cattle, sheep, goats, dogs, rabbits, or similar farm
 57 animals for commercial purposes;

58 (E) The production and keeping of honeybees, the production of honeybee products,
 59 and honeybee processing facilities;

60 (F) The production, processing, or packaging of eggs or egg products;

61 (G) The manufacturing of feed for poultry or livestock;

62 (H) The rotation of crops, including without limitation timber production;

63 (I) Commercial aquaculture;

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

66 (K) The operation of any roadside market.

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

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

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

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

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

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

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

91 ~~(4.3)~~(6) 'Rendering plant' has the meaning provided by Code Section 4-4-40.

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

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

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

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

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

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

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

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

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

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

124 (1) The addition or expansion of physical facilities;

125 (2) The adoption of new technology;

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

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

128 (5) A change in the type of operation;

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

131 (7) A transfer of ownership.

132 (f)(1) Any change described in paragraphs (1) through (5) of subsection (e) of this Code
 133 section that directly causes or materially contributes to the alleged nuisance and requires
 134 permitting or other approval by the Georgia Department of Agriculture, the Georgia
 135 Department of Natural Resources, or any federal agency, or requires a zoning decision
 136 by a local government, shall create a newly established date of operation.

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

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

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

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

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

152 (h) This Code section shall not preempt or override any present or future rule or regulation
153 of the Georgia Environmental Protection Division or the United States Environmental
154 Protection Agency."

155 **SECTION 3.**

156 This Act shall become effective upon its approval by the Governor or upon its becoming law
157 without such approval.

158 **SECTION 4.**

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