

House Bill 1150 (COMMITTEE SUBSTITUTE)

By: Representatives Dickey of the 140<sup>th</sup>, Watson of the 172<sup>nd</sup>, England of the 116<sup>th</sup>, Jasperse of the 11<sup>th</sup>, Pirkle of the 155<sup>th</sup>, and others

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 provide for and remove definitions; to limit the  
4 circumstances under which agricultural facilities and operations may be sued for a nuisance;  
5 to provide for a short title; to provide for related matters; to repeal conflicting laws; and for  
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Freedom to Farm Act."

10 **SECTION 2.**

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

13 "41-1-7.

14 (a) It is the declared policy of the state to conserve, protect, and encourage the  
15 development and improvement of its agricultural and forest land and facilities for the

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16 production or distribution of food and other agricultural products, including without  
17 limitation forest products. When nonagricultural land uses extend into agricultural or  
18 agriculture-supporting industrial or commercial areas or forest land or when there are  
19 changed conditions in or around the locality of an agricultural facility or agricultural  
20 support facility, such operations often become the subject of nuisance actions. As a result,  
21 such facilities are sometimes forced to cease operations. Many others are discouraged from  
22 making investments in agricultural support facilities or farm improvements or adopting  
23 new related technology or methods. It is the purpose of this Code section to reduce losses  
24 of the state's agricultural and forest land resources by limiting the circumstances under  
25 which agricultural facilities and operations or agricultural support facilities may be deemed  
26 to be a nuisance.

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

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

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

42 ~~(3)~~(2) 'Agricultural operation' means:

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

63 ~~(3.1)~~(3) 'Agricultural support facility' means any food processing plant or forest products  
64 processing plant together with all related or ancillary activities, including trucking;  
65 provided, however, that this term expressly excludes any rendering plant facility or  
66 operation.

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

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

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

75 ~~(C) The construction or location of improvements on land in or around the locality of~~  
 76 ~~an agricultural facility or agricultural support facility closer to such facility than those~~  
 77 ~~improvements located on such land at the time of commencement of the agricultural or~~  
 78 ~~agricultural support operation or the agricultural facility or agricultural support facility~~  
 79 ~~at issue and throughout the first year of operation of said facility. 'Concentrated Animal~~  
 80 ~~Feeding Operation,' or 'CAFO,' means the same as that term is used pursuant to 40~~  
 81 ~~C.F.R. Section 122.23.~~

82 ~~(4.1)(5)~~ 'Food processing plant' means a commercial operation that manufactures,  
 83 packages, labels, distributes, or stores food for human consumption and does not provide  
 84 food directly to a consumer.

85 ~~(4.2)(6)~~ 'Forest products processing plant' means a commercial operation that  
 86 manufactures, packages, labels, distributes, or stores any forest product or that  
 87 manufactures, packages, labels, distributes, or stores any building material made from  
 88 gypsum rock.

89 ~~(4.3)(7)~~ 'Rendering plant' has the meaning provided by Code Section 4-4-40.

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

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

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

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

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

97 ~~(i) The conversion of industrial or commercial areas to residential use; or~~  
98 ~~(ii) An increase in the number of residences in an industrial or commercial area~~  
99 ~~which increase is unrelated to the use of the industrial or commercial area for~~  
100 ~~traditional industrial or commercial purposes.~~

101 (8) 'Swine feeding operation' means a lot or facility where swine have been, are, or will  
102 be stabled, confined, fed, or maintained for a total of at least 45 days in any 12 month  
103 period, and which does not sustain crops, vegetation, forage growth, or post-harvest  
104 residues in the normal growing season, and operates as a CAFO, as that term is defined  
105 in paragraph (2) of subsection (b) of 40 C.F.R. Section 122.23.

106 (c) No agricultural facility, agricultural operation, any agricultural operation at an  
107 agricultural facility, agricultural support facility, or any operation at an agricultural support  
108 facility shall be or shall become a nuisance, either public or private, ~~as a result of changed~~  
109 ~~conditions in or around the locality of such facility or operation~~ if the facility or operation  
110 has been in operation for one year or more. The provisions of this subsection shall not  
111 apply when a nuisance results from the negligent, improper, or illegal operation of any such  
112 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 commenced operation. If  
115 the physical facilities of the agricultural operation or the agricultural support facility are  
116 subsequently expanded or new technology adopted, the established date of operation for  
117 each change is not a separately and independently established date of operation and the  
118 commencement of the expanded operation does not divest the agricultural operation or  
119 agricultural support facility of a previously established date of operation.

120 (e) For purposes of this Code section, the commencement of operation of a swine feeding  
121 operation or a CAFO as that term is defined in paragraph (2) of subsection (b) of 40 C.F.R.  
122 Section 122.23, shall create a separate and independent established date of operation. The  
123 provisions of subsection (c) of this Code section shall not apply to a swine feeding

124 operation or CAFO when a nuisance results from the negligent, improper, or illegal  
125 operation of any such operation."

126 **SECTION 3.**

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