

2022

HB 1150: Freedom to Farm Act

Wyatt Bazrod
wbazrod1@student.gsu.edu

Sarah Page
sjones65@student.gsu.edu

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NUISANCES

General Provisions: Amend Article 7 of Chapter 1 of Title 41 of the Official Code of Georgia Annotated, Relating to Treatment of Agricultural Facilities and Operations and Forest Land as Nuisances, so as to Provide for Legislative Intent; Provide for and Remove Definitions; Limit the Circumstances Under Which Agricultural Facilities and Operations May be Sued for a Nuisance; Provide for a Short Title; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 41-1-7 (amended)
BILL NUMBER:	HB 1150
ACT NUMBER:	598
GEORGIA LAWS:	2022 Ga. Laws 87
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act protects agricultural facilities, agricultural operations, and forest landowners from nuisance lawsuits after two years of operation. If a facility converts to a confined animal feeding operation, the two-year time period restarts.

History

When the dust, noise, and smells of farming combine with a swelling population of citizens unfamiliar with farming practices, the ground becomes fertile for a nuisance lawsuit. In 2020, 352,000 Georgians were employed in the agriculture industry, and agribusiness contributed \$69.4 billion to the state's economy.¹ Farming, however, is not the only successful industry in Georgia. Large corporations have relocated or opened facilities in the state, bringing an influx of new

1. Sharon P. Kane, *Ag Snapshots 2022*, CTR. OF AGRIBUSINESS & ECON. DEV., UNIV. GA. (2022), <https://caed.uga.edu/content/dam/caes-subsite/caed/publications/ag-snapshots/2022CAEDAgsnapshotsWeb.pdf> [<https://perma.cc/W2N8-HLH8>].

residents.² In fact, Georgia’s population is growing “more than 1.5 times that of the U.S. population” with a ten-year growth rate of 14.4%.³

Initially passed in 1980, Georgia’s right-to-farm law aimed to shield agricultural land users from nuisance actions.⁴ A key provision, the “changed conditions” provision, provided that “[n]o agricultural or farming operation . . . shall be or shall become a nuisance . . . as a result of changed conditions in or around the locality of such agricultural or farming operation.”⁵ Through this provision, the legislature intended to protect agricultural facilities when they grew, changed operations, or when conditions outside the facility changed.⁶ The law granted nuisance-lawsuit protection for facilities once they operated for at least one year.⁷

In 1988, the Georgia General Assembly amended the law to clarify which facilities receive nuisance suit protection by defining “agricultural operation” and “agricultural facility.”⁸ The 1988 amendment also provided that expansions or technological changes at established facilities would not restart the one-year clock, allowing established facilities to retain their protections.⁹

In 2002, the legislature defined “changed conditions” to mean: “(A) [a]ny change in the use of land in an agricultural area; (B) [a]n increase in the magnitude of an existing use of land in or around the locality of an agricultural facility . . .; or (C) [t]he construction or location of” land improvements “in or around the locality of an agricultural facility” and is closer to the agricultural facility than when the agricultural operation or facility operated within its first year.¹⁰ This definition clarified the existing principle that an agricultural facility

2. 1980 Ga. Laws 1253, § 1 at 1253 (codified at O.C.G.A. § 41-1-7(a) (1981)); C. White, *Torts Nuisance Actions: Exempt Certain Farming Activities*, 5 GA. ST. U. L. REV. 506, 506 (1988).

3. 1980 Ga. Laws 1253, § 1 at 1253 (codified at § 41-1-7(a)); White, *supra* note 2, at 506.

4. 1980 Ga. Laws 1253, § 1 at 1253 (codified at § 41-1-7(a)); White, *supra* note 2, at 506.

5. § 41-1-7(b).

6. White, *supra* note 2, at 507.

7. § 41-1-7(b).

8. 1988 Ga. Laws 1775, § 1, at 1777 (codified at O.C.G.A. § 41-1-7(b) (Supp. 1988)); White, *supra* note 2, at 507.

9. 1988 Ga. Laws 1775, § 1, at 1778 (codified at § 41-1-7(d)); White, *supra* note 2, at 507.

10. 2002 Ga. Laws 817, § 1, at 818 (formerly found at O.C.G.A. § 41-1-7(b)(4) (2002)).

could not be considered a nuisance due to changed conditions on or off premises.¹¹

In 2004, legislators further amended the law by broadening nuisance protections for agricultural operations and extending protections to agricultural support facilities and forest land and operations.¹² The law defined “[a]gricultural support facility” as “any food processing plant or forest products processing plant together with all related or ancillary activities, including trucking.”¹³ Food processing plants and forest products processing plants are commercial operations that “manufacture[], package[], label[], distribute[], or store[]” food and forest products, respectively.¹⁴ In 2007, legislators extended the definition of “[f]orest products processing plant” to include a commercial operation “that manufactures, packages, labels, distributes, or stores any building material made from gypsum rock.”¹⁵

A 2017 nuisance suit in North Carolina, in which a federal jury awarded \$50 million to the neighbors of a hog farm, prompted amendments to right-to-farm laws across the country.¹⁶ Farm bureaus and agribusiness organizations began lobbying for more protective measures, prompting Georgia legislators to discuss revisions to Georgia’s law.¹⁷ In 2019, Representative Tom McCall (R-33rd) introduced House Bill (HB) 545, sponsored by Representative Robert Dickey (R-140th), to amend Code section 41-1-7.¹⁸ The amendment removed the changed conditions provision to give agricultural facilities broader protection.¹⁹ After additional revisions, the bill passed in the House but stalled in the Senate.²⁰ Legislators and small-

11. O.C.G.A. § 41-1-7(b) (1981).

12. 2004 Ga. Laws 681, § 1 at 681, 683–84 (codified at O.C.G.A. §§ 41-1-7(b)(3.1), (c) (2004)).

13. § 41-1-7(b)(3.1).

14. § 41-1-7(b)(4.1), (b)(4.2). “Food processing plant” specifies that the commercial operation “does not provide food directly to a consumer.” § 41-1-7(b)(4.1).

15. 2007 Ga. Laws 267, § 1, at 268 (codified at O.C.G.A. § 41-1-7(b)(4.2) (2007)).

16. Jim Galloway, *Opinion: Behind a Stalled Agriculture Bill Is a Farmer vs. Farmer Split*, ATLANTA J.-CONST. (Feb. 25, 2020), <https://www.ajc.com/blog/politics/opinion-behind-stalled-agriculture-bill-farmer-farmer-split/31m4LISw7VlqHevqfDw8zK/> [<https://perma.cc/8ZJU-FYU4>]. See generally *In re NC Swine Farm Nuisance Litigation*, No. 15-CV-00013-BR, 2017 WL 5178038 (E.D.N.C. Nov. 8, 2017).

17. Telephone Interview with Rep. Robert Dickey (R-140th) (May 22, 2022) [hereinafter Dickey Interview] (on file with the Georgia State University Law Review).

18. Georgia General Assembly, HB 545, Bill Tracking, <https://www.legis.ga.gov/legislation/55615> [<https://perma.cc/NB3B-EZZE>]; HB 545, as introduced, 2019 Ga. Gen. Assemb.

19. HB 545, as introduced, 2019 Ga. Gen. Assemb.

20. Dickey Interview, *supra* note 17.

scale farmers cited concerns that the bill would protect large industrialized operations at the expense of small family farms.²¹

In 2022, Representative Dickey introduced House Bill (HB) 1150, the Freedom to Farm Act.²² When introducing the bill on the House floor, Representative Dickey emphasized that it was created to protect family—not industrial—farms and that the bill “is about keeping neighbors out of lawsuits.”²³

The bill was drafted to strengthen protections from nuisance suits to encourage the development and improvement of the agriculture industry by “remov[ing] the concept of changed conditions.”²⁴ In other states, changed conditions led to ambiguities about whether a condition was changed such that it triggered the law’s protection.²⁵ The bill would also protect urban farms—which were effectively excluded under prior versions of the law—in instances where a farm established new facilities in already developed areas.²⁶ To allay fears that the bill would prioritize protection for industrial farms at the expense of family farms, the bill included a provision that resets the time to bring a suit if a farm converts to a confined animal feeding operation (CAFO).²⁷ The bill’s initial draft preserved the one-year time frame.²⁸

The bill received wide support from House Majority Leader Jon Burns (R-159th), House Speaker David Ralston (R-7th), Senate leadership, and Governor Brian Kemp (R).²⁹ Other bill champions included the Georgia Farm Bureau, Georgia Poultry Federation, Georgia Cattleman’s Association, and Georgia Agribusiness Council.³⁰

The bill’s opponents included lawmakers, farmers, and the Southern Environmental Law Center.³¹ Opponents argued the bill attempted to

21. See Galloway, *supra* note 16.

22. Video Recording of House Proceedings at 35 min., 5 sec. (Mar. 3, 2022) [hereinafter House Proceedings Video] (remarks by Rep. Robert Dickey (R-140th)), <https://www.youtube.com/watch?v=-cd0wEW308w> [<https://perma.cc/72QX-JYLK>].

23. *Id.* at 35 min., 21 sec.

24. *Id.* at 38 min., 1 sec.

25. *Id.* at 38 min., 10 sec.

26. *Id.* at 37 min., 52 sec.

27. *Id.* at 38 min., 47 sec.

28. HB 1150, as introduced, 2022 Ga. Gen. Assemb.; House Proceedings Video, *supra* note 1, at 38 min., 30 sec.

29. See Dickey Interview, *supra* note 17.

30. *Id.*

31. See Christopher Quinn, *Kemp Signs Bill Protecting Farmers from Lawsuits Filed by Neighbors*,

fix a problem that did not exist—lawsuits putting farmers out of business.³² Opponents argued that few nuisance suits have been filed against farmers in Georgia and that the bill’s supporters could not cite a single farm that had been put out of business due to a nuisance suit.³³ They were also concerned the bill created a problem for existing landowners by removing protections for those “who w[ere] there first.”³⁴

Bill Tracking of HB 1150

Consideration and Passage by the House

Representatives Robert Dickey (R-140th), Sam Watson (R-172nd), Terry England (R-116th), Rick Jasperse (R-11th), Clay Pirkle (R-155th), and Beth Camp (R-131st) sponsored HB 1150 in the House of Representatives.³⁵ Representative Dickey placed the bill into the House hopper on February 1, 2022.³⁶ The House read the bill for the first time on February 2, 2022, and a second time on February 3, 2022.³⁷ Thereafter, the House assigned the bill to the House Agriculture and Consumer Affairs Committee.³⁸ The Committee met on February 15, 2022, to discuss the bill and solicited testimony from several concerned citizens during the committee meeting.³⁹

ATLANTA J.-CONST. (Apr. 14, 2022), [https://www.youtube.com/watch?v=K8u7ul8MCBM&t=1593s&ab_channel=GeorgiaHouseofRepresentatives](https://www.ajc.com/politics/georgia-state-legislature/kemp-signs-bill-protecting-farmers-from-lawsuits-filed-by-neighbors/FNF64JIAPFEX3HGKCBEDGBMOQU/[https://perma.cc/JB7M-8D93]; see House Proceedings Video, supra note 22, at 54 min., 34 sec. (remarks by Rep. Stacey Evans (D-57th)); Video Recording of House Agriculture and Consumer Affairs Committee at 1 hr., 2 min., 23 sec. (Feb. 15, 2022) [hereinafter Feb. 15 House Committee Video] (remarks by Charlotte Swansea, Farmer), <a href=) [https://perma.cc/3SMY-DG9U].

32. See Video Recording of Senate Proceedings at 4 hr., 12 min., 23 sec. (Apr. 1, 2022) [hereinafter Senate Proceedings Video] (remarks by Sen. Freddie Powell Sims (D-12th)), <https://www.youtube.com/watch?v=DDK-T6INyUY&t=1218s> [https://perma.cc/VLF3-7ZGH].

33. Christopher Quinn, *Georgia Capitol Revisits Property Rights as Farmers, Neighbors Clash*, ATLANTA J.-CONST. (Feb. 25, 2022), <https://www.ajc.com/news/georgia-capitol-revisits-property-rights-as-farmers-neighbors-clash/XQGG3FIZZFCT3FNJW4VUPXQXCM/> [https://perma.cc/LARB-EJ4F].

34. *Id.*

35. Georgia General Assembly, HB 1150, Bill Tracking [hereinafter HB 1150, Bill Tracking], <https://www.legis.ga.gov/legislation/61581> [https://perma.cc/BTX8-G2GB].

36. *Id.*

37. State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022.

38. *Id.*; HB 1150, Bill Tracking, *supra* note 35.

39. See Feb. 15 House Committee Video, *supra* note 31, at 30 min., 0 sec. (remarks by Rep. Robert

On February 24, 2022, the Committee met again to reconsider the bill, and Representative Dickey introduced a substitute based on the witness testimony heard on February 15.⁴⁰ The substitute incorporated the definition of a CAFO as is defined in the Code of Federal Regulations.⁴¹ Additionally, the substitute clarified that the commencement of a CAFO or swine feeding operation will “create a separate and independent established date of operation” that resets the time frame for establishing when a citizen or entity can file a nuisance suit.⁴²

The House Committee favorably reported the bill by substitute on February 28, 2022.⁴³ The House of Representatives passed the bill by substitute on March 3, 2022, by a vote of 102 to 62.⁴⁴

Consideration and Passage by the Senate

Senator Larry Walker III (R-20th) sponsored the bill in the Senate.⁴⁵ The Senate read the bill for the first time on March 4, 2022, and referred the bill to the Senate Agriculture and Consumer Affairs Committee.⁴⁶ The Committee met on March 14, 2022, and favorably reported the bill by substitute on March 29, 2022.⁴⁷ The amendments

Dickey (R-140th)).

40. Video Recording of House Agriculture and Consumer Affairs Committee Meeting at 44 min., 0 sec. (Feb. 24, 2022) [hereinafter Feb. 24 House Committee Video] (remarks by Rep. Robert Dickey (R-140th)), https://www.youtube.com/watch?v=P7ddhpvXR70&t=3762s&ab_channel=GeorgiaHouseofRepresentatives [https://perma.cc/8F5E-P8QP].

41. 40 C.F.R. § 122.23 (2021); Feb. 24 House Committee Video, *supra* note 40, at 48 min., 0 sec.; HB 1150 (HCS), § 2, p. 4, ll. 79–81, 2022 Ga. Gen. Assemb.

42. HB 1150 (HCS), § 2, pp. 5–6, ll. 120–25, 2022 Ga. Gen. Assemb.; Feb. 24 House Committee Video, *supra* note 40, at 48 min., 0 sec. (“[W]e have added a section to make it abundantly clear that if a farm converts to a type of operation that qualifies as a CAFO (confined animal facility operation), the time clock resets to allow adequate opportunity for neighbors to pursue action. So, I heard, loud and clear, that concern from a lot of neighbors and a lot of people. We put that in the sub[stitute].”).

43. State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022.

44. *Id.*; Georgia House of Representatives Voting Record, HB 1150, #602 (Mar. 3, 2022).

45. HB 1150, Bill Tracking, *supra* note 35.

46. *Id.*; State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022.

47. Video Recording of Senate Agriculture and Consumer Affairs Committee Meeting at 18 min., 30 sec. (Mar. 14, 2022) (remarks by Rep. Robert Dickey (R-140th)), <https://vimeo.com/showcase/8404286/video/688105103> [https://perma.cc/9WWV-3LSS]; State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022; Senate Proceedings Video, *supra* note 32, at 3 hr., 37 min., 01 sec. (remarks by Sen. Larry Walker III (R-20th)).

were presented to the Senate on April 1, 2022.⁴⁸ First, the Committee proposed limiting the right to file a nuisance suit against an agricultural facility or operation to only those who own real property affected by the alleged nuisance.⁴⁹ Second, the Committee proposed changing the time an aggrieved party has from development of a nuisance from one year to two years.⁵⁰ The Committee added language to ensure counties could bring suit in the rare instance of a public nuisance.⁵¹ Finally, the Committee added language that “[n]othing in this Code section shall preempt or override any present or future rule or regulation of the Georgia Environmental Protection Division or the United States Environmental Protection Agency.”⁵²

On April 1, 2022, the Georgia Senate voted on the amended bill, and it passed with a vote of 31 to 23.⁵³

Final Consideration and the Governor’s Signature

On April 4, 2022, the bill, as amended by the Senate, went back to the House for consideration.⁵⁴ Representative Dickey asked for the representatives’ favorable consideration of HB 1150 as amended by the Senate.⁵⁵ Representative Dickey praised the bipartisan efforts that went into the bill and the Senate’s changes.⁵⁶ On that same day, the

48. Senate Proceedings Video, *supra* note 32, at 3 hr., 43 min., 55 sec. (remarks by Sen. Larry Walker III (R-20th)).

49. HB 1150 (LC 51 0194S), § 2, p. 5, ll. 101–104, 2022 Ga. Gen. Assemb.; Senate Proceedings Video, *supra* note 32, at 3 hr., 43 min., 55 sec. (remarks by Sen. Larry Walker III (R-20th)).

50. HB 1150 (LC 51 0194S), § 2, p. 5, l. 109, 2022 Ga. Gen. Assemb.; Senate Proceedings Video, *supra* note 32, at 3 hr., 43 min., 38 sec. (remarks by Sen. Larry Walker III (R-20th)).

51. HB 1150 (LC 51 0202S), § 2, p. 5, l. 101, 2022 Ga. Gen. Assemb.; Senate Proceedings Video, *supra* note 32, at 3 hr., 44 min., 12 sec. (remarks by Sen. Larry Walker III (R-20th)).

52. HB 1150 (LC 51 0194S), § 2, p. 6, ll. 124–126, 2022 Ga. Gen. Assemb.; Senate Proceedings Video, *supra* note 32, at 3 hr., 45 min., 20 sec. (remarks by Sen. Larry Walker III (R-20th)).

53. State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022; Georgia Senate Voting Record, HB 1150, #790 (Apr. 1, 2022).

54. Video Recording of House Proceedings at 2 hr., 40 min., 15 sec. (Apr. 4, 2022) (remarks by Rep. Robert Dickey (R-140th)), <https://www.youtube.com/watch?v=cIJX3X1oHfM&t=1974s> [<https://perma.cc/NX8F-3H2G>].

55. *Id.*

56. *Id.*

House passed the Senate amendment by a vote of 106 to 60.⁵⁷ The House sent the bill to Governor Brian Kemp (R) on April 7, 2022.⁵⁸

Governor Kemp signed HB 1150 into law on April 13, 2022, becoming Act 598.⁵⁹ The Act became effective July 1, 2022.⁶⁰

The Act

The Act amends Article 7 of Chapter 1 of Title 41 of the Official Code of Georgia Annotated to protect agricultural facilities, agricultural operations, and forest landowners from nuisance lawsuits once they have operated for two years.⁶¹

The Act removes the definitions of “agricultural area,” “changed conditions,” and “urban sprawl” from subsection (b) of Code section 41-1-7 and adds the CAFO definition.⁶² The new definition provides that a CAFO “means the same as [the] term is used [in] subsections (b) and (c) of 40 C.F.R. Section 122.23.”⁶³ Subsection (b) of the federal code provides that a “large” CAFO “stables or confines” different categories of animals, including, for example, more than “700 mature dairy cows”; “10,000 swine each weighing less than 55 pounds”; “30,000 laying hens or broilers, if the [facility] uses a liquid manure handling system”; or “82,000 laying hens” if the facility does not use a liquid manure handling system.⁶⁴ If an animal feeding operation (AFO) directly discharges pollutants into water that flows through the facility or discharges via a man-made ditch or flushing system, a facility can be deemed a “medium” CAFO that confines between “200 to 699 mature dairy cows”; “3,000 to 9,999 swine each weighing less than 55 pounds”; “9,000 to 29,000 laying hens, if the [facility] uses a liquid manure handling system”; or “25,000 to 81,999 laying hens” if

57. State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022; Georgia House of Representatives Voting Record, HB 1150, #871 (Apr. 4, 2022).

58. State of Georgia Final Composite Status Sheet, HB 1150, May 19, 2022.

59. *Id.*; Press Release, Off. of the Governor, Gov. Kemp Signs Legislation to Support Georgia’s No. 1 Ag Industry (Apr. 13, 2022), <https://gov.georgia.gov/press-releases/2022-04-13/gov-kemp-signs-legislation-support-georgias-no-1-ag-industry> [<https://perma.cc/FR8K-CL9W>].

60. HB 1150, Bill Tracking, *supra* note 35.

61. 2022 Ga. Laws 87, § 2, at 89 (codified at O.C.G.A. § 41-1-7(d) (2022)).

62. Compare O.C.G.A. § 41-1-7(b) (2021), with 2022 Ga. Laws 87, § 2, at 88–89 (codified at O.C.G.A. § 41-1-7(b) (2022)).

63. O.C.G.A. § 41-1-7(b)(4) (2022).

64. 40 C.F.R. § 122.23(b)(4) (2021).

the facility does not use a liquid manure handling system.⁶⁵ Subsection (c) of the federal code provides that an appropriate authority may designate any AFO as a CAFO “upon determining that it is a significant contributor of pollutants to waters of the United States.”⁶⁶

The Act also amends subsection (c) of Code section 41-1-7 to limit who may file a private nuisance suit against agricultural facilities, agricultural operations, or support facilities to a “plaintiff [who] legally possesses the real property affected by the conditions alleged to be a nuisance.”⁶⁷ This provision removes the possibility for nonprofit organizations or other groups to file private nuisance suits against protected entities on behalf of others unless they own the property affected by the nuisance.

The Act amends subsection (d) by no longer requiring satisfaction of the changed conditions requirement before triggering nuisance-lawsuit protection.⁶⁸ This amendment also sought to remove ambiguity around the meaning of changed conditions.⁶⁹ Further, it provides nuisance protection to farms that move into an established area, such as urban farms.⁷⁰ Finally, property owners now have two years from the facility beginning operation to file a nuisance lawsuit.⁷¹

Subsection (f) of Code section 41-1-7 establishes a separate, independent operational commencement date for facilities that convert to CAFOs, effectively restarting the clock for property owners to file a nuisance lawsuit.⁷²

Lastly, subsection (g) provides that nothing in the Code preempts or overrides Georgia Environmental Protection Division or United States Environmental Protection Agency rules and regulations.⁷³

65. § 122.23(b)(6).

66. § 122.23(c).

67. 2022 Ga. Laws 87, § 2, at 89 (codified at § 41-1-7(c)).

68. *Compare* 2022 Ga. Laws 87, § 2, at 89 (codified at O.C.G.A. § 41-1-7(d) (2022)), *with* O.C.G.A. § 41-1-7(c) (2021).

69. House Proceedings Video, *supra* note 22, at 38 min., 10 sec. Note that Georgia’s law, unlike other state laws, defined changed conditions. *Id.* at 1 hr., 30 min., 26 sec. (remarks by Rep. Debbie Buckner (D-137th)).

70. *See id.* at 35 min., 21 sec. (remarks by Rep. Robert Dickey (R-140th)).

71. O.C.G.A. § 47-1-7(d) (2022)).

72. § 47-1-7(f).

73. § 47-1-7(g).

Analysis

In light of the Act's purpose to clarify Georgia's nuisance farming law, the debate over the Act rested upon three issues: (1) striking the term "changed conditions"; (2) the Act's general constitutionality; and (3) CAFO provisions.⁷⁴

Changed Conditions Replaced with Blanket Protection

Proponents of the Act repeatedly stressed that amending it would clarify the law and protect Georgia farmers.⁷⁵ Through its amendments, the Georgia General Assembly struck several terms from the Code section, including "changed conditions."⁷⁶ Prior to the Act, a Georgia farmer had to operate for at least one year and, as a defense, prove that some condition, external to the farmer and farm, changed.⁷⁷ The law, however, did not explain what exactly constituted a changed condition.⁷⁸

Due to the ambiguity surrounding the meaning of "changed condition," other states' courts have held that a changed condition did not exist, thereby allowing neighbors or developers to pursue nuisance suits despite a farm's operation preexisting the changed condition.⁷⁹ Reacting to such rulings, this Act replaces the changed condition requirement with a blanket statute of limitations.⁸⁰

The Act's opponents believed the removal of the changed conditions provision would create further problems and recommended refining the definition to provide further clarity.⁸¹ The Act specifies

74. See Feb. 15 House Committee Video, *supra* note 31, at 31 min., 40 sec. (remarks by Rep. Robert Dickey (R-140th)).

75. *Id.*

76. Compare O.C.G.A. § 41-1-7(b)(4) (2021), with 2022 Ga. Laws 87, § 2, at 89–90 (codified at O.C.G.A. § 41-1-7(b) (2022)).

77. Feb. 15 House Committee Video, *supra* note 31, at 1 hr., 07 min., 54 sec. (remarks by Mike Giles, Georgia Poultry Federation).

78. See O.C.G.A. § 41-1-7(b)(4) (2021).

79. See *Toftoy v. Rosenwinkel*, 983 N.E.2d 463, 467 (Ill. 2012) ("[P]laintiffs' acquisition of ownership created the legally protected interest in which the plaintiffs are claiming interference. In other words, defendants' farm could not 'become a nuisance' to plaintiffs until they acquired their property in 1998. The change in ownership was a 'changed condition' that gave rise to plaintiffs' nuisance action.").

80. See Feb. 15 House Committee Video, *supra* note 31, at 51 min., 9 sec. (remarks by Rep. Rob Leverett (R-33rd)).

81. See House Proceedings Video, *supra* note 22, at 59 min., 09 sec. (remarks by Rep. Stacey Evans

that its protections do not extend to any “negligent, improper, or illegal operation.”⁸² While the use of a statute of limitations simplifies whether a suit can proceed based on a time bar, future litigation may arise to determine what constitutes an “improper” operation.

Constitutionality Challenges Are Likely to Fail

All fifty states have some form of right-to-farm statutes.⁸³ The Act’s opponents raised constitutionality concerns that barring nuisance suits would immunize farms from otherwise culpable conduct.⁸⁴ The House Committee on Agriculture and Consumer Affairs solicited testimony regarding these concerns.⁸⁵ Specifically, the testimony mentioned other states where right-to-farm statutes’ constitutionality has been contested.⁸⁶ Overwhelmingly, state supreme courts have upheld right-to-farm statutes as constitutional.⁸⁷

A comparison of other states’ right-to-farm statutes reveals how Georgia’s law still provides leniency for neighbors. For example, North Carolina and Iowa—states with the most contentious and recent litigation concerning right-to-farm statutes—are the nation’s top states for hog farming.⁸⁸ Hog farming implicates CAFOs, which were a main concern of both legislators and witnesses during the legislative session.⁸⁹ The North Carolina statute provides protections from nuisance suits to farmers—including farms with CAFOs—for only one

(D-57th)); Feb. 15 House Committee Video, *supra* note 31, at 1 hr., 26 min., 03 sec. (remarks by April Lipscomb, Attorney, Southern Environmental Law Center).

82. 2022 Ga. Laws 87, § 2, at 89 (codified at O.C.G.A. § 41-1-7(d) (2022)).

83. Beau R. Morgan, *Iowa and Right to Farm: An Analysis of the Constitutionality of Right to Farm Statutes Across the United States*, 53 CREIGHTON L. REV. 623, 624–25 (2020).

84. Feb. 15 House Committee Video, *supra* note 31, at 1 hr., 25 min., 30 sec. (remarks by April Lipscomb, Attorney, Southern Environmental Law Center).

85. *Id.*; Feb. 24 House Committee Video, *supra* note 40, at 52 min., 10 sec. (remarks by Buck Dixon, Associate, Troutman Pepper).

86. Feb. 15 House Committee Video, *supra* note 31, at 1 hr., 25 min., 30 sec. (remarks by April Lipscomb, Attorney, Southern Environmental Law Center); Feb. 24 House Committee Video, *supra* note 40, at 52 min., 10 sec. (remarks by Buck Dixon, Associate, Troutman Pepper).

87. Feb. 24 House Committee Video, *supra* note 40, at 52 min., 10 sec. (remarks by Buck Dixon, Associate, Troutman Pepper).

88. See Ashley Pollard, *This Little Piggy Caused a Nuisance: Analyzing North Carolina’s 2018 Amendment To Its Right-to-Farm Act*, 14 LIBERTY U. L. REV. 569, 587 (2020).

89. See, Feb. 15 House Committee Video, *supra* note 31, at 1 hr., 3 min., 45 sec; Senate Proceedings Video, *supra* note 32, at 3 hr., 44 min., 35 sec.

year from the time the nuisance originates.⁹⁰ By contrast, HB 1150 provides more leniency by granting neighbors up to two years to file a nuisance suit.⁹¹ More importantly, the Act expressly provides a CAFO carve-out that restarts the clock for a nuisance suit if a farmer starts a CAFO, thus providing neighbors an additional two years to file suit should any nuisance arise.⁹²

CAFO Conversions Do Not Retain Nuisance-Lawsuit Protection

Prior right-to-farm amendments in Georgia died in their respective legislative sessions because of concerns that large-scale agriculture would benefit at the expense of family farms.⁹³ As such, HB 1150's success hinged on proving CAFOs were not driving the changes.⁹⁴ To alleviate concerns that farms converting to CAFOs would be grandfathered into nuisance-lawsuit protection, Representative Robert Dickey (R-140th) added the operational commencement reset date.⁹⁵

While assuaging some, the CAFO provision could not overcome other opponents' dissatisfaction with the removal of changed conditions and concern that the Act "value[s] newly arriving industrial-scale animal operations while ignoring Georgians' property rights."⁹⁶ Further, while a farm's conversion to a CAFO restarts the statute of limitations, there is no mechanism available to neighbors if a CAFO does not cause a nuisance within the first two years.⁹⁷ In Georgia, there is no case law regarding nuisance lawsuits filed against CAFOs.

The Act's proponents pointed to the Code section that prohibits protection "when a nuisance results from the negligent, improper, or

90. N.C. GEN. STAT. § 106-701(a)(3) (2022).

91. See 2022 Ga. Laws 87, § 2, at 89 (codified at O.C.G.A. § 47-1-7(d) (2022)).

92. 2022 Ga. Laws 87, § 2, at 89 (codified at § 47-1-7(f)).

93. See Galloway, *supra* note 19.

94. See House Proceedings Video, *supra* note 22, at 35 min., 21 sec. (emphasizing that the Act is not intended to protect big farming).

95. House Proceedings Video, *supra* note 22, at 38 min., 47 sec; Feb. 15 House Committee Video, *supra* note 31, at 38 min., 36 sec. (remarks by Rep. Robert Dickey (R-140th)).

96. Dave Williams, *Freedom to Farm Bill Hits General Assembly*, CAPITOL BEAT (Feb. 15, 2022), <http://capitol-beat.org/2022/02/freedom-to-farm-bill-hits-general-assembly/> [https://perma.cc/UR9J-CM2B].

97. Electronic Mail Interview with Rep. Marvin Lim (D-99th) (May 9, 2022) [hereinafter Lim Interview] (on file with the Georgia State University Law Review).

illegal operation” of a facility as evidence that neighbors would have protection from CAFOs that eventually turn into bad actors.⁹⁸ While any injured property owner can file a civil claim, agency enforcement and criminal law prosecution require overburdened government agencies to act.⁹⁹ Proper oversight of CAFOs has been a problem in Georgia and has resulted in farms operating without their required permits.¹⁰⁰ Furthermore, negligence is not interchangeable with nuisance, so farm odors that make a neighboring property unlivable can exist without breaching a duty of care.¹⁰¹

Conclusion

HB 1150 strikes contentious language from the original statute while still providing a set time frame for neighbors to file nuisance actions. Additionally, HB 1150 provides an exception to neighboring property owners if a farm converts to a CAFO by resetting the time to file suit for an additional two years. By striking several terms and streamlining Georgia’s nuisance law, HB 1150 seeks to keep Georgia farmers on the farm and out of the courtroom while providing redress for Georgia’s growing population.

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98. O.C.G.A. § 41-1-7(d) (2022).

99. Lim Interview, *supra* note 97.

100. U.S. ENV’T PROT. AGENCY, REP. NO. 11-P-0274, REGION 4 SHOULD STRENGTHEN OVERSIGHT OF GEORGIA’S CONCENTRATED ANIMAL FEEDING OPERATION PROGRAM 3–7 (2011).

101. Lim Interview, *supra* note 97.

