

1-1-1988

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### Recommended Citation

C. White, *TORTS Nuisance Actions: Exempt Certain Farming Activities*, 5 GA. ST. U. L. REV. (1988).

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## TORTS

### *Nuisance Actions: Exempt Certain Farming Activities*

CODE SECTION:	O.C.G.A. § 41-1-7 (amended)
BILL NUMBER:	SB 570
ACT NUMBER:	1437
SUMMARY:	The Act clarifies which farming activities are protected against nuisance actions arising from urban sprawl. In addition, expansion and technological improvement of existing facilities are protected from nuisance actions. Finally, the Act contains a provision which prevents this "right to farm" law from being used as a shield for negligently operated farming activities.
EFFECTIVE DATE:	July 1, 1988

#### *History*

To protect agricultural land users from nonagricultural land use interference, former law<sup>1</sup> exempted farmers from common-law nuisance actions in certain situations. The avowed purpose of the statute was to protect agricultural land users from nuisance actions.<sup>2</sup> Legislators were concerned that nuisance actions would be detrimental to the state's farming industry and deplete the industry's resources.<sup>3</sup> The statute specifically provided that no agricultural facility would become a nuisance as the result of changed conditions in or around the facility, provided the facility had been in operation for one year or more.<sup>4</sup>

#### *SB 570*

The Act amends O.C.G.A. § 41-1-7 by more clearly defining the activities protected by the statute. For example, the former Code section protected "farming operation[s]."<sup>5</sup> Because "farming operation" was not defined by the legislature, the Georgia Supreme Court turned to the definition of "agricultural commodity" found in the Agricultural Com-

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1. 1980 Ga. Laws 1253 (formerly found at O.C.G.A. § 41-1-7(b) (1985)).
  2. 1980 Ga. Laws 1253 (formerly found at O.C.G.A. § 41-1-7(a) (1985)).
  3. Telephone interview with Senator Sam McGill, Senate District No. 24 (Apr. 18, 1988) [hereinafter McGill Interview].
  4. 1980 Ga. Laws 1253 (formerly found at O.C.G.A. § 41-1-7(b) (1985)).
  5. *Id.*

modities Promotion Act (ACPA)<sup>6</sup> in an effort to interpret the statute.<sup>7</sup> One commentator argued that relying on the definition in the ACPA would extend coverage of Code section 41-1-7 to processing facilities in addition to the production facilities intended by the legislature.<sup>8</sup> SB 570 eliminates ambiguity as to the scope of the section by expressly including facilities which process all farm animals and eggs in the definition of "agricultural operation."<sup>9</sup>

Both "agricultural operation" and "agricultural facility" are defined in SB 570.<sup>10</sup> The bill, as introduced, listed nine categories of activities which qualified as agricultural operations.<sup>11</sup> The House, in a floor amendment, expanded the definition by including "the production and keeping of honeybees and honeybee products" within "agricultural operation."<sup>12</sup> The definition of "agricultural facility" was also amended to protect honeybee farmers under the Act.<sup>13</sup> The bill was assigned to a conference committee after the Senate insisted on its original version.<sup>14</sup> The conference committee agreed to the House floor amendment but added a provision including "[t]he manufacturing of feed for poultry or livestock" in the definition of an agricultural operation.<sup>15</sup>

The Act also addresses both technological changes in and expansion of agricultural facilities and operations.<sup>16</sup> Although unaddressed in previous versions of the bill, the Conference Committee added language providing that neither expansion of nor technological change in an existing agricultural facility should alter the established date of operation for determining coverage under the Act.<sup>17</sup> Therefore, once a date of operation is established, any subsequent expansion or technological improvement will relate back to the original date of operation so that the facility will be protected against nuisance lawsuits based on those changed conditions.<sup>18</sup>

6. O.C.G.A. §§ 2-8-1 to -30 (1982 & Supp. 1988).

7. *Herrin v. Opatut*, 248 Ga. 140, 281 S.E.2d 575 (1981) (court stated that because poultry and poultry products were agricultural commodities, defendant's egg farm was an agricultural facility).

8. Centner, *Agricultural Nuisances and the Georgia "Right to Farm" Law*, 23 GA. ST. B.J. 19, 22 (1986).

9. O.C.G.A. § 41-1-7(b)(2)(D), (F) (Supp. 1988).

10. O.C.G.A. § 41-1-7(b) (Supp. 1988).

11. SB 570, as introduced, 1988 Ga. Gen. Assem.

12. SB 570 (HFA), 1988 Ga. Gen. Assem.

13. *Id.* The House floor amendment added the following italicized language to the bill: "'Agricultural facility' includes, but is not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, livestock, animals, poultry, livestock products, or poultry products, *honeybees, or honeybee products* or which is used in commercial aquaculture." *Id.* (emphasis added).

14. Final Composite Status Sheet, Mar. 7, 1988.

15. SB 570 (CCS), 1988 Ga. Gen. Assem.

16. O.C.G.A. § 14-1-7(d) (Supp. 1988).

17. SB 570 (CCS), 1988 Ga. Gen. Assem.

18. O.C.G.A. § 14-1-7(d) (Supp. 1988).

While farmers need reasonable flexibility to expand, problems arise if the expansion is so drastic that a new or completely different facility results.<sup>19</sup> The Act's protection against changed conditions, however, is not expressly limited to those changes which are reasonable.<sup>20</sup> Under the Act, it may be argued that a protected agricultural facility may expand repeatedly without ever becoming a nuisance.<sup>21</sup> However, only reasonable expansion or change in technology was intended to be permitted under the Act.<sup>22</sup>

Finally, the Act excludes from its protection those nuisances which result "from the negligent, improper, or illegal operation of any agricultural facility."<sup>23</sup> Thus, the Act is not a shield for negligently operated agricultural activities. This provision codified the holding of *Herrin v. Opatut*,<sup>24</sup> which stated that harmful activities, such as polluting a stream, would never be protected.<sup>25</sup>

The Act does not specifically address local lawmaking authority regarding farming activities and nuisance actions.<sup>26</sup> Arguably, a properly drafted ordinance could be adopted which would effectively circumvent the Act without directly conflicting with it, thereby prohibiting an activity that otherwise would be protected under the statute.<sup>27</sup> This possibility is not viewed as a problem because it is unlikely such an ordinance could withstand attack.<sup>28</sup>

The Georgia statute also makes no provision for potential conflicts when the nonagricultural use legitimately outweighs the agricultural use of the land. For example, some states require certain levels of agricultural productivity before a "right to farm" law is triggered.<sup>29</sup> In contrast, the Georgia Legislature intentionally did not include such a provision, reflect-

19. Centner, *supra* note 8, at 24.

20. O.C.G.A. § 14-1-7 (Supp. 1988).

21. Senator McGill states, however, that the legislators presumed that a reasonableness requirement would be read into the statute. McGill Interview, *supra* note 3.

22. *Id.*

23. O.C.G.A. § 41-1-7(c) (Supp. 1988).

24. 248 Ga. 140, 281 S.E.2d 575 (1981).

25. *Herrin v. Opatut*, 248 Ga. at 142, 281 S.E.2d at 578.

26. Centner, *supra* note 8, at 25—26. Some states explicitly limit local law-making authority when the state "right to farm" law would be affected. *See, e.g.*, 3 PA. CONS. STAT. § 953 (Supp. 1988); N.C. GEN. STAT. § 106-701(d) (Supp. 1987).

27. Centner, *supra* note 8, at 24.

28. McGill Interview, *supra* note 3.

29. 3 PA. CONS. STAT. § 952 (Supp. 1988), for example, includes the following in its definition of normal agricultural operation: "(1) not less than ten contiguous acres in area; or (2) less than ten contiguous acres in area but has anticipated yearly gross income of at least \$10,000." Consistent with the Pennsylvania legislature's viewpoint, Centner notes that "[r]ight to farm statutes [typically are] not intended to favor agriculture in all circumstances at the expense of other land uses." Centner, *supra* note 8, at 26.

1988]

LEGISLATIVE REVIEW

509

ing its belief that an individual has the right to pursue a chosen line of work regardless of its profitability.<sup>30</sup>

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30. McGill Interview, *supra* note 3.