

1 SB368  
2 88881-2  
3 By Senators Benefield, Little (Z), Denton, Pittman, Brooks,  
4 and Griffith  
5 RFD: Agriculture, Conservation, and Forestry  
6 First Read: 14-FEB-08

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8       SYNOPSIS:               This bill would provide that a farm  
9                               operation operated by an owner or principal may not  
10                              be found to be a public or private nuisance or a  
11                              violation of county or municipal ordinances or  
12                              resolutions unless certain conditions are met.  
13                              Generally, the farm or an expansion of the farm  
14                              could not be found to be a nuisance or to be in  
15                              violation of county or municipal ordinances or  
16                              resolutions if the farm is operated in accordance  
17                              with applicable laws and regulations and does not  
18                              violate certain designated practices. The bill  
19                              would also authorize the owner of farm to recover  
20                              legal fees in the event the owner of the farm  
21                              prevails in any legal action to declare a farm  
22                              operation to be a nuisance.

23  
24   A BILL  
25   TO BE ENTITLED  
26   AN ACT  
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1           To enact the Alabama Family Farm Preservation Act,  
2           to provide that farm operations, if operated lawfully under  
3           certain conditions, may not be characterized as public or  
4           private nuisances or be determined to be in violation of a  
5           municipal or county ordinance.

6           BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7           Section 1. (a) This act shall be known and may be  
8           cited as "The Alabama Family Farm Preservation Act."

9           (b) The Legislature recognizes the importance of the  
10          family farm in Alabama. It is the intent of the Legislature to  
11          assist in the preservation of family farms in Alabama by  
12          assuring that lawfully conducted farms and farm operations  
13          will not be considered to be public or private nuisances when  
14          and so long as they are operated in conformance with generally  
15          accepted agricultural and farm management practices, as  
16          described herein. The Legislature further recognizes that  
17          family farms may incorporate to take advantage of those  
18          provisions of law not afforded to other corporations.

19          Section 2. For the purposes of this act, the  
20          following words and phrases shall have the following  
21          respective meanings:

22                 1. FARM. The land, including ponds, buildings,  
23                 support facilities, machinery, equipment, tractors,  
24                 implements, and other appurtenances used by the owner or  
25                 operator thereof in the production of farm products, with  
26                 respect to which there has been issued a farm serial number by  
27                 the Farm Services Agency or which comports with the definition

1 of a farm under 7 Code of Federal Regulations 718.2, or any  
2 subsequent regulation of similar import.

3 2. FARM OPERATION. Any condition existing on a farm  
4 or activity taking place on a farm pursuant to the instigation  
5 or direction of the owner or operator of the farm, including  
6 in the latter case, the owner's lessee, agent, or independent  
7 contractor, or of a supplier of goods or services, which  
8 condition or activity occurs, exists, or is supplied on a farm  
9 in connection with the production of farm products and  
10 includes, but is not limited to: The marketing of produce at  
11 roadside stands or farm markets; the operation of machinery,  
12 tractors, implements, and irrigation pumps in the production  
13 of farm products; the generation of noise, odors, dust, and  
14 fumes in the production of farm products; the plowing of farm  
15 land and the harvesting and the planting of trees or crops;  
16 the irrigation and ground or aerial seeding and spraying of  
17 farm and silvicultural products; the disposal of manure; the  
18 application of chemical fertilizers and amendments,  
19 conditioners, insecticides, pesticides, and herbicides; and  
20 the employment and use of labor in the production of farm and  
21 silvicultural products; provided, however, that such term  
22 shall not include or cover any condition existing or  
23 activities taking place on a public road or anywhere else  
24 other than on a farm as defined herein.

25 3. FARM PRODUCTS. Any plants, fish, or animals  
26 useful, or intended to be consumed or used by humans or other  
27 animals and plants, and includes, but is not limited to,

1 forages and sod crops, grains and food crops, dairy products,  
2 poultry and poultry products, bees, livestock and livestock  
3 products, trees and silvicultural products, and fruits,  
4 berries, vegetables, flowers, seeds, grasses, and other  
5 similar products, as well as any product derived therefrom.

6 Section 3. (a) A farm or farm operation shall not  
7 be deemed to be or become a public or private nuisance for  
8 purposes of Section 6-5-127, Code of Alabama 1975, or any  
9 other provision of law, or be deemed in violation of any  
10 municipal or county ordinance or resolution heretofore or  
11 hereafter adopted declaring any farm or farm operation a  
12 public or private nuisance other than zoning ordinances  
13 applicable thereto, if the farm or farm operation meets all of  
14 the following requirements:

15 (1) The owner of the land, or a partner, officer,  
16 director, or other principal thereof, resides on the farm or  
17 actively participates in the operation of the farm, or leases  
18 the farm to a person who resides on the farm or actively  
19 participates in the operation of the farm.

20 (2) The farm or farm operation conforms to generally  
21 accepted agricultural and farm management practices, as well  
22 as applicable agricultural health and sanitary procedures,  
23 carried out consistently and in accordance with the  
24 appropriate rules, regulations, and orders applicable thereto  
25 then in force of the Alabama Department of Agriculture and  
26 Industries, the Alabama Department of Environmental  
27 Management, the Alabama Department of Public Health, the

1 United States Environmental Protection Agency, and the United  
2 States Department of Agriculture, including, but not limited  
3 to the following agencies thereof: The Natural Resources  
4 Conservation Service, the Farm Service Agency, and the Animal  
5 and Plant Health Inspection Service.

6 (b) The following conditions shall constitute  
7 evidence of a farm or farm operation being a nuisance:

8 (1) The presence of untreated or improperly treated  
9 human waste, or of garbage, offal, dead animals, dangerous  
10 waste materials, or gases which are harmful to human or animal  
11 life that are not being handled or disposed of in accordance  
12 with applicable state or federal laws and regulations.

13 (2) The presence of improperly built or improperly  
14 maintained septic tanks, water closets, or privies.

15 (3) The keeping of diseased animals that are  
16 dangerous to human health, unless the animals are kept in  
17 accordance with a current state or federal disease control  
18 program.

19 (4) The presence of unsanitary places where animals  
20 are slaughtered, which may give rise to diseases harmful to  
21 human or animal life.

22 (5) The presence on the right of way of any public  
23 road abutting or traversing the farm of trash, abandoned or  
24 worn out equipment, vehicles, parts or implements, other than  
25 trash, or items placed there for scheduled removal or  
26 disposal.

1           The aforementioned conditions shall not, however,  
2           constitute the only evidence to be considered in determining  
3           whether a farm or farm operation being conducted thereon  
4           constitutes a nuisance.

5           (c) No farm or farm operation shall be deemed to be  
6           or shall become a public or private nuisance solely as a  
7           result of a change in ownership of the land on which it is  
8           located, a change in the type of farm product being produced,  
9           a change in the boundaries of the farm, a change in conditions  
10          or use of property located adjacent to or in the vicinity of  
11          the land on which the farm operation is located, or a change  
12          in the farm operation brought about in order to comply with  
13          rules and regulations and orders adopted by local, state, or  
14          federal agencies.

15          Section 4. In the event that a civil action or other  
16          legal proceeding is brought in any court or forum wherein a  
17          plaintiff or complainant shall claim that any farm or farm  
18          operation in this state constitutes a public or private  
19          nuisance, any owner or operator of the farm or farm operation  
20          who is made a defendant or respondent in the action or  
21          proceeding shall be entitled to recover from any plaintiff or  
22          complainant bringing the civil action the full amount of the  
23          defendant's or respondent's legal fees and litigation expenses  
24          in the event it shall be finally determined in the action or  
25          proceeding, taking into account the provisions of this act,  
26          that the farm or farm operation does not constitute a public  
27          or private nuisance.

1           Section 5. No municipality, county, or other unit  
2 of local government in the state, whether by ordinance,  
3 resolution, or otherwise, may declare or treat any farm or  
4 farm operation that meets the requirements of Section 3 of  
5 this act as a public or private nuisance, and any attempt to  
6 take such an action shall have no force and effect beyond the  
7 provisions of then applicable state and federal law, rule, or  
8 regulation.

9           Section 6. In order that the citizens of Alabama  
10 shall have the opportunity to be as fully informed as  
11 practicable respecting the establishment hereafter in this  
12 state of farm operations known as Concentrated Animal Feeding  
13 Operations as defined in Section 502(14) of the Federal Clean  
14 Water Act, and as described in Chapter 335-6-7 of the rules  
15 promulgated by the Alabama Department of Environmental  
16 Management, the Legislature finds and declares that it is the  
17 public policy of this state that appropriate nonproprietary  
18 information respecting the pendency and issuance of National  
19 Pollutant Discharge Elimination Systems general or individual  
20 permits in respect of such farm operations be available to the  
21 citizens of Alabama, and that the Alabama Department of  
22 Environmental Management, in carrying out the public notice  
23 provisions and requirements of its Rules 335-6-6.21 and  
24 335-6-6.23(5)(d) and (13), shall act consistently with this  
25 public policy and said rules and with all applicable federal  
26 requirements and guidelines including, by way of example and  
27 not limitation, the Unified National Animal Feeding Operation

1 Strategy released by the U.S. Department of Agriculture and  
2 the U.S. Environmental Protection Agency on March 9, 1999.

3 Section 7. The provisions of this act are  
4 supplemental and shall not be construed to repeal any law not  
5 in direct conflict with this act.

6 Section 8. The provisions of this act are severable.  
7 If any part of this act is declared invalid or  
8 unconstitutional, that declaration shall not affect the part  
9 which remains.

10 Section 9. This act shall become effective  
11 immediately upon its passage and approval by the Governor, or  
12 upon its otherwise becoming a law.