

No. 1982-133

AN ACT

HB 1823

Protecting agricultural operations from nuisance suits and ordinances under certain circumstances.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Legislative policy.

It is the declared policy of the Commonwealth to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When non-agricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and ordinances. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this act to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be the subject matter of nuisance suits and ordinances.

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Municipality.” A county, city, borough, incorporated town, township or a general purpose unit of government as established by the act of April 13, 1972 (P.L.184, No.62), known as the “Home Rule Charter and Optional Plans Law.”

“Normal agricultural operation.” The customary and generally accepted activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural and aquicultural crops and commodities and is:

- (1) not less than ten contiguous acres in area; or
- (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.

Section 3. Limitation on local ordinances.

Every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.

Section 4. Limitation on public nuisances.

(a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has been in operation for one year or more prior to the date of bringing such action: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.

(b) The provisions of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof.

Section 5. Water damages.

The provisions of section 4 shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by him or it on account of any pollution of, or change in condition of, the waters of any stream or on account of any flooding of lands to any such person, firm or corporation.

Section 6. Saving clause.

(a) This act shall not be construed to invalidate any contract made prior to its effective date nor shall it be construed to apply to any suit brought prior to its effective date.

(b) The provisions of this act shall not affect or defeat the intent of any Federal, State or local statute or governmental regulation except nuisance ordinances as they apply to any normal agricultural operation.

Section 7. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 8. Effective date.

This act shall take effect in 60 days.

APPROVED—The 10th day of June, A. D. 1982.

DICK THORNBURGH