

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1823

Session of
1981

INTRODUCED BY WENGER, COLE, GRIECO, MADIGAN, PITTS, HONAMAN,
A. C. FOSTER, JR., WASS, BRANDT, BOWSER, JOHNSON,
D. R. WRIGHT, MOEHLMANN, E. H. SMITH, LLOYD, KLINGAMAN,
W. W. FOSTER, MORRIS, FARGO, STAIRS, CALTAGIRONE, GRUPPO,
JACKSON, SIEMINSKI, MILLER, ARMSTRONG, GREENWOOD AND
PHILLIPS, SEPTEMBER 22, 1981

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 9, 1981

AN ACT

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

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

5 Section 1. Legislative policy.

6 It is the declared policy of the Commonwealth to conserve and
7 protect and encourage the development and improvement of its
8 agricultural land for the production of food and other
9 agricultural products. When nonagricultural land uses extend
10 into agricultural areas, agricultural operations often become
11 the subject of nuisance suits and ordinances. As a result,
12 agricultural operations are sometimes forced to cease
13 operations. Many others are discouraged from making investments
14 in farm improvements. It is the purpose of this act to reduce
15 the loss to the Commonwealth of its agricultural resources by

1 limiting the circumstances under which agricultural operations
2 may be the subject matter of nuisance suits and ordinances.

3 Section 2. Definitions.

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

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

11 "Normal agricultural operation." The customary and generally
12 accepted activities, practices and procedures that farmers
13 adopt, use or engage in year after year in the production,
14 preparation and processing for market of any and all plant and
15 animal products and is:

16 (1) not less than ten contiguous acres in area; or

17 (2) less than ten contiguous acres in area but has an
18 anticipated yearly gross income of at least \$2,000.

19 Section 3. Limitation on local ordinances.

20 Every municipality shall encourage the continuity,
21 development and viability of agricultural operations within its
22 jurisdiction. Every municipality that defines or prohibits a
23 public nuisance shall exclude from the definition of such
24 nuisance any agricultural operation conducted in accordance with
25 normal farming operations so long as the agricultural operation
26 does not have a direct adverse ~~affect~~ EFFECT on the public <—
27 health and safety.

28 Section 4. Limitation on public nuisances.

29 (a) No nuisance action shall be brought against an
30 agricultural operation which has lawfully been in operation for

1 one year or more prior to the date of bringing such action,
2 where the conditions or circumstances complained of as
3 constituting the basis for the nuisance action have existed
4 substantially unchanged since the established date of operation
5 and are normal agricultural operations, or if the physical
6 facilities of such agricultural operations are substantially
7 expanded and the expanded facility has been in operation for one
8 year or more prior to the date of bringing such action:
9 Provided, however, That nothing herein shall in any way restrict
10 or impede the authority of this State ~~or protect~~ FROM PROTECTING <—
11 the public health, safety and welfare or the authority of a
12 municipality to enforce State law.

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

20 Section 5. Water damages.

21 The provisions of section 4 shall not affect or defeat the
22 right of any person, firm or corporation to recover damages for
23 any injuries or damages sustained by him or it on account of any
24 pollution of, or change in condition of, the waters of any
25 stream or on ~~the account of any overflow~~ FLOODING of lands to <—
26 any such person, firm or corporation.

27 Section 6. Saving clause.

28 This act shall not be construed to invalidate any contract
29 made prior to its effective date nor shall it be construed to
30 apply to any ~~cause of action arising~~ SUIT BROUGHT prior to its <—

1 effective date.

2 Section 7. Severability.

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

9 Section 8. Effective date.

10 This act shall take effect in 60 days.