

State Right-to-Farm Provisions

Alexandra Lizano

Research Fellow, National Agricultural Law Center

Rusty Rumley

Senior Staff Attorney, National Agricultural Law Center



The National Agricultural Law Center is the nation's leading source for timely, authoritative and objective agricultural and food law research and information.



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

All fifty states have enacted right-to-farm statutes. These laws are meant to protect farmers from nuisance lawsuits in the case where an individual moves to an area where a farming operation previously exists or in cases where the farm has existed for a period of time substantially unchanged before the lawsuit is filed. In earlier nuisance suits, defendant farmers saw mixed success defending these nuisance claims with the common law defense that the plaintiff “came to the nuisance.” As a result, legislatures have responded and provided statutory protection to farmers to provide a defense to nuisance suits of this kind. These statutes are referred to as right-to-farm statutes. It is important to note that while all fifty states have enacted right-to-farm statutes that there exists substantial variation across the country and the purpose of this paper is to give a broad overview of some of the major trends in this type of legislation.

Triggering Event

A triggering event is an event that causes or triggers grounds to invoke the right-to-farm statute as a defense to a nuisance lawsuit. Three triggering events have been identified for the purposes of this project: (1) Statutes of repose, (2) Being first in time, and/or (3) An area zoned for agriculture.

A statute of repose is written so that an agricultural or farming operation shall not become a nuisance after it has been in operation for a certain period of time. This period of time is typically between one and three years.

Triggering Event
Statutes of repose:
25 states

A first in time provision means that a farming operation will not be deemed a nuisance so long as it was first in time. Usually, this refers to the farming operation being established before one or more of the uses on surrounding land.

Triggering Event
First in time provision:
19 states

The area zoned for agriculture triggering event refers to whether the farming operation is required to be within an area that has been formally zoned for agriculture.

Triggering Event
Area zoned for agriculture:
9 states

Change in the Operation

Half of the states have a provision in the right-to-farm statute that identify whether or not a change in the farming operation will have an effect on the farm's ability to be considered a nuisance.

Change in operation provisions are structured differently per state, states that have structured the provision similarly are grouped as follows:

- Certain changes in operation like ownership, technology, methods of production, or the product itself product are not considered "changes" that would subject a farming operation to liability.
- Other states permit changes such as an expansion of the operation and allow those changes to retain the commencement date of the original operation in assessing whether a nuisance claim can be brought.
- A different group of states provide that if there are "substantial changes" to the farming operation, then the right-to-farm nuisance exception does not apply to those changes.
- Some states do not allow "reasonable expansion" to constitute a nuisance. Both of these statutory provisions give examples or define what is considered "reasonable" or not reasonable.

Change in Operation
Enumerated changes
approach: 5 states

Change in Operation
Permit expansions and
retain original date: 4
states

Change in Operation
"Substantial changes"
ineligibility: 6 states

Change in Operation
Reasonable expansion
exception: 2 states

- Other states provide that if there is a change in operation such as an expansion, the date of commencement for the operation changes as well.
- Finally, some allow for changes in operation to not be considered a nuisance so long as all other applicable laws in the jurisdiction are being followed.

Change in Operation
If expansions, date of commencement changes: 4 states

Change in Operation
Compliance with other laws: 2 states

Limitation on Protections

There are various limitations on the protections provided by right-to-farm statutes. Some states condition nuisance protection under right-to-farm statutes on the farming operation’s compliance with state and federal laws and if the operation is following good agricultural practice. Also, if the health and safety of the public is implicated, some states do not allow for nuisance suit protection under right-to-farm laws.

The vast majority of states have provisions that limit the protection of the right-to-farm statute. These limitations fall into at least one of the following categories.

- *Compliance with State and Federal Laws:* The farming operation must be compliant with the applicable state and federal laws, the right-to-farm nuisance suit protection would not apply.
- *Following Good Agricultural Practice:* Various states’ right-to-farm laws are only applicable to farms following good agricultural practices. Some states may specifically define what is considered good agricultural practice, other states have provisions that generally require the farming operation to comply with good agricultural practices as required by industry customs.
- *Public Health and Safety:* If the farming operation has an adverse effect on public health and safety, the operation may be considered a nuisance.

Limitation on Protections
Compliance with state & federal laws: 27 states

Limitation on Protections
Following good agricultural practice: 26 states

Limitation on Protections
Public health and safety: 15 states

Preemption of Local Government Actions

Some right-to-farm statutes have a provision that explicitly allows the right-to-farm to preempt any local government actions or ordinances that may conflict with the right-to-farm statute.

Preemption of Local Government Action
21 states

Attorney's Fees Awarded

Fifteen states contain a provision in the right-to-farm statute that awards attorneys' fees. Some will award attorneys' fees to the defendant farming operation if the nuisance suit is deemed to be frivolous, malicious, and/or the defendant farming operation can prevail in proving that the operation was not a nuisance.

Other statutes provide that the prevailing party can be awarded attorney's fees. These states do not specify that only the defendant if prevailing can be awarded fees.

Damage Caps

Very few right-to-farm statutes provide specific damage caps by the statute itself. These provisions limit the amount of money that can be obtained in compensatory damages. Each of these statutes provides specific formulas that cap the amount of damages that can be recovered. Many of these caps may not be found with the right-to-farm statutes and in some states the constitutionality of these caps may be in question.



Attorney's Fees

15 states



Damage Caps

7 states impose damage caps through the state's right-to-farm statute