

AB 546 31B

*A Livestock Producer's Legal Guide*

Khan, 420 N.E. 2d 1028 (Ill. App. Ct. 1981), a lower court's determination that odors and insect problems from a poultry business were sufficiently bothersome to justify injunctive relief unless steps were taken to eliminate the accumulation of manure was upheld. In Arbor Theatre Corp. v. Campbell Soup Co., 296 N.E. 2d 11 (Ill. App. Ct. 1973), a court determined a manure composting operation on a mushroom farm in a rural area which began in 1947, was not a nuisance to an outdoor theater which was started, with knowledge of the odors, on adjacent property in 1961.

In 1981, Illinois adopted a right to farm statute which provides statutory protection to farms, including "the feeding, breeding and management of livestock." The law provides that if the farm has been in operation for a year and was not a nuisance when begun and is not operated in a negligent manner, it does not become a nuisance as a result of changes in the surrounding area.

A 1989 case, Village of Goodfield v. Jamison, 544 N.E.2d 1229 (Ill. App. Ct. 1989), dealt with the power of a municipality to regulate activities outside the corporate limits. The city attempted to prohibit the construction of a hog transfer station one half mile outside of Goodfield by declaring the proposed facility a nuisance. The Court said that although the city could declare nuisances prospectively, that could only be done for facilities located within the city limits. Testimony showed the facility would not be a nuisance so the court upheld the ruling it could be built.

The Illinois Agricultural Areas Conservation and Protection Act [Ill. Ann. Stat. ch. 5 para. 1001-1020.3] provides for the creation of agricultural areas within which land may not be used for other than agricultural production. Agricultural production means the production for commercial purposes of crops, livestock, and aquatic products, but not land or portions thereof used for processing of such crops, livestock and aquatic products. The definition is broadly worded and includes farm buildings used for protecting farm machinery and farm dwellings occupied by farm owners, farm tenants or seasonal or year-round hired workers. While the Agricultural Areas law does not mention protection from nuisance suits, it is another way to protect farms from interference by those unaccustomed to farm practices. The legislative findings of both laws begin with the statement: "It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." The law has not been interpreted in any reported cases, but the right to farm protections were incorporated into the state's new livestock odor rules, discussed at p. 104.

Resources

- Illinois Agricultural Ass'n, 1701 Towanda Ave., Bloomington, IL 61702-2901 (309)557-2111
- Illinois Beef Ass'n, 993 Clock Tower Dr., Springfield, IL 62704-1389 (217)787-4280
- Illinois Pork Producers Ass'n, 6411 South 6th St., Frontage Road East, Springfield, IL 62707 (217)529-3100
- Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, IL 62794-9276 (217)782-3397



**INDIANA** Ind. Code Ann. §34-1-52-4 (Burns 1986)

The Indiana courts have considered several nuisance allegations against livestock facilities. In Yeager and Sullivan Inc. v. O'Neill, 324 N.E.2d 846 (Ind. Ct. App. 1975), the court ruled that flies and odors from a 3,000 hog feeding operation were a nuisance and enjoined it until changes could be made and required the payment of damages to the neighbors. In Rust v. Guinn, 429 N.E.2d 299 (Ind. Ct. App. 1981), the court found odors and flies arising from the waste lagoons on a 495,000 hen laying facility were a nuisance to an adjoining homeowner. The court did not issue an injunction but awarded \$9,500 in damages. In neither case had the complaining neighbor "come to the nuisance," instead, the agricultural operations were established near existing residences.

In 1981 Indiana adopted a right to farm statute which protects agricultural operations, including livestock and poultry production facilities, from public and private nuisance actions in certain situations. To obtain protection, the agricultural operation must have been in operation on the locality for more than one year prior to the changed conditions in the vicinity which give rise to the nuisance complaint. In addition there must not have been a significant change in the hours or type of operation, and it must not be operated in a negligent manner. The Indiana law has been interpreted by the courts in two cases. A 1987 case, Shatto v. McNulty, 509 N.E.2d 897 (Ind. Ct. App. 1987), is discussed in detail at p. 43. A more recent case, Laux v. Chopin Land Associates, Inc., 550 N.E.2d 100 (Ind. Ct. App. 1990), is also discussed at p. 44. In both cases the law has worked to offer protection to farming operations. Another 1990 Indiana Court of Appeals decision did not turn out so well for the agricultural operator. In Day v. Ryan, 560 N.E.2d 77 (Ind. Ct. App. 1990), a stockyard operation was shut down under a road ordinance which prohibited semi-trailer trucks from using the road leading to the business. The case is another example of how an agricultural operation can be closed without resorting to nuisance claims.

Resources

- Indiana Farm Bureau, Inc., 130 E. Washington St., Indianapolis, IN 46206 (317)263-7851
- Indiana State Poultry Ass'n, Poultry Science Bldg., Purdue Univ., Lafayette, IN 47907 (317)494-8517
- Indiana Beef Cattle Ass'n., 8770 Guion Rd. #A, Indianapolis, IN 46268-3017 (317)872-2333
- Dairy and Nutrition Council, Indianapolis (317)842-3060
- Indiana Pork Producers, 8902 Vincennes Circle, Suite F, Indianapolis, IN 46268 (317)872-7500
- Indiana Dept. of Environmental Management, 105 South Meridian St, P.O. Box 6015, Indianapolis, IN 46206-6015 (317)232-8560

**IOWA** Iowa Code Ann. §§172D. 1-4. and Chap. 176B

Iowa courts have considered several cases involving nuisance suits against livestock operations. In the case of Patz v. Farmegg Products, Inc., 196 N.W.2d 557 (Iowa 1972), discussed at p. 12, the court ruled odors from an 80,000 chicken facility were a nuisance to a nearby farmhouse which pre-dated the



operation. In Valasek v. Baer, 401 N.W.2d 33 (Iowa 1987), the Iowa Supreme Court enjoined a farmer from spreading hog manure on his fields near a neighbor's home, discussed at p. 14.

Iowa has two right to farm laws in effect. A 1976 law designed to protect feedlots, is discussed at p. 49. The statute has not been directly interpreted by the courts, but is the subject of an article, McCarty and Matthews, "Foreclosing Common Law Nuisance for Livestock Feedlots: The Iowa Statute," 2 Ag. L. J. 186 (1980). Another article which discusses Iowa's county zoning law exempting agricultural facilities is Hamilton, N., "Freedom to Farm! Understanding the Agricultural Exemption to County Zoning in Iowa," 31 Drake Law Review 565 (1981).

In 1982 Iowa enacted a second right to farm law, Chap. 176B, under which landowners may petition the county board of supervisors to establish "agricultural areas" containing 500 acres or more. Farm operations located within an agricultural area are not subject to public or private nuisance actions, regardless of when the agricultural activity began or expanded. The protection does not apply if the operation is conducted negligently or if the nuisance action arises due to pollution of a stream, overflowing of land, or excessive soil erosion onto another's land. This law has not been interpreted by the courts. A recent survey by the author shows agricultural areas have been formed in fewer than 10 counties.

#### Resources

- Iowa Farm Bureau Fed., 5400 University Ave, West Des Moines, 50265 (515)225-5400
- Iowa Poultry Ass'n, 535 E. Lincoln Way, Box 704, Ames, IA 50010 (515)232-2103
- Iowa Cattlemen's Ass'n, P.O. Box 1730, Ames, Iowa 50010-1730 (515)233-3270
- Iowa Dairy Council, Ankeny (515)964-0696
- Iowa Pork Producers Ass'n, P.O. Box 71009, Clive, IA 50325 (515)225-7675
- Iowa Dept. of Natural Resources, Environmental Protection Division, Wallace Bldg., 900 E. Grand Ave., Des Moines, IA 50319 (515)281-8690

**KANSAS** Kan. Stat. Ann. §§2-3203 to 2-3204 (1990) and  
Kan. Stat. Ann. §47-1505 (1990)

Kansas courts have considered several cases involving nuisance actions against cattle feedlots. In Dill v. Excel Packing Co., 331 P.2d 539 (Kan. 1958), the Kansas Supreme Court reversed a trial court finding a feedlot was a nuisance, ruling there was insufficient evidence to support claims that odors and flies were a nuisance in the agricultural area which had a long history of cattle feeding. In Fields v. Anderson Cattle Co., 396 P.2d 276 (Kan. 1964), the Court ruled a cattle feeder had to be given the opportunity to show it had complied with an earlier order requiring it to limit a nuisance. A 1968 case, Atkinson v. Herington Cattle Co., 436 P.2d 816 (Kan. 1968), represents a form of private environmental protection action and shows how a feeding operation can be liable for damages for other than a nuisance. Atkinsons began operating a



grade A dairy on the banks of Level Creek in 1958. In 1961 Herington Cattle Co. began feeding cattle one mile upstream. In June 1963, Atkinsons noticed the water in Level Creek had "a high level of odor and a deep yellow color." Shortly thereafter their well became polluted with high levels of nitrates and their dairy herd and property were injured. The trial court found runoff from the cattle lot was the cause of the polluted well and awarded the Atkinsons \$29,060.53 in damages including \$7,500 in punitive damages. The Supreme Court of Kansas upheld the ruling except for the punitive damages. Because the feedlot had taken steps to prevent the pollution, the Court could not characterize the conduct as "malicious, vindictive, oppressive, fraudulent, or a willful or wanton disregard of plaintiff's rights" so as to support a punitive damage award. The Court said, "The fact that a business is a lawful one does not exempt it from liability when contaminated or polluted water escapes onto the land of others in such quantities as to cause injury."

In 1982 Kansas enacted a right to farm law which provides: "Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance, public or private, unless the activity has a substantial adverse effect on the public health and safety." Agricultural activities conducted in conformity with federal, state, and local laws are presumed to be good agricultural practices which do not adversely effect public health and safety. In 1988 a new section was added to allow fee shifting in cases involving unsuccessful nuisance claims concerning chemical application, discussed at p. 37.

Kansas has another right to farm statute dating from 1963, which sets standards for the operation of licensed feedlots. (§47-1505) The statute says that "any feedlot operated in compliance with such standards, and in compliance with regulations promulgated by the commissioner shall be deemed to be *prima facie* evidence that a nuisance does not exist." The standards for licensed feedlot operations include: 1) providing reasonable methods for the disposal of animal excrement;...3) providing adequate drainage from feedlot premises constructed as to control pollution of streams and lakes;...and 7) conducting feedlot operations in conformity with established practices in the feedlot industry. The various Kansas right to farm laws have not been considered in any reported court cases.

#### Resources

- Kansas Farm Bureau, P.O. Box 3500, 2627 KFB Plaza, Manhattan, KS 66502-8508 (913)587-6000
- Kansas Poultry Ass'n, 1816 Alabama, Manhattan, KS 66502 (913)539-5441
- Kansas Livestock Ass'n, 6031 6031 SW 37th ST., Topeka, KS 66614-5129 (913)273-5115
- Kansas Pork Producers Council, 2601 Farm Bureau Road, Manhattan, KS 66502 (913)776-0442
- Kansas Dept. of Health and Environment, Building 740, Forbes Field, Topeka, KS 66620 (913)296-1500



**KENTUCKY** Ky. Rev. Stat. Ann. §413.072 (Baldwin 1990)

Kentucky courts have considered the application of nuisance law to agriculture on several occasions. In Hall v. Budde, 169 S.W.2d 33 (Ky. 1943), the Kentucky Supreme Court held a hog farm was a legitimate business and odors and noise from the farm were not a nuisance when the plaintiffs had moved into the neighborhood many years before with knowledge of the operation. In Curry v. Farmers Livestock Market, 343 S.W.2d 134 (Ky. Ct. App. 1961), the court held that a livestock barn and market was not a nuisance in a suit by adjacent owners who had erected a motel, swimming pool, and residence. In Valley Poultry Farms Inc. v. Preece, 406 S.W.2d 413 (Ky. Ct. App. 1966), the court upheld a showing that odors, noise, and insects from a neighbor's chicken houses were a nuisance even though the operation used due care.

In 1980 Kentucky enacted a right to farm statute establishing a state policy to reduce the loss to the state of its agricultural resources, by limiting the circumstances under which agricultural operations may be deemed to be nuisances. The statute, which includes in the definition of "agricultural operation" any facility for livestock, poultry, livestock products, and poultry products, provides that an agricultural operation, which has been in operation for more than one year, does not become a public or private nuisance due to any changed conditions in the locality. The operation must not have been a nuisance when begun and must not be operated in a negligent manner.

In 1991 Kentucky codified the common law of nuisance in a statute that might be of interest to agricultural producers faced with nuisance suits. [§411.500-570]. Included in the relevant facts to be considered in determining the existence of a private nuisance are: the lawful nature of the defendant's use of the property; the manner in which the defendant has used the property; the importance of the defendant's use of the property to the community; the influence of the defendant's use of the property to the growth and prosperity of the community; the kind, volume, and duration of the annoyance or interference with the use and enjoyment of claimant's property caused by defendant's use of property; the respective situations of the defendant and claimant; and the character of the area in which the defendant's property is located, including, but not limited to, all applicable statutes, laws, or regulations. [§411.550(a-g)] There have been no reported cases interpreting the right to farm law or the new codification of common law nuisance.

Resources

- Kentucky Farm Bureau Fed., 9201 Bunsen Parkway, Louisville, KY 40220 (502)495-5000
- Kentucky Poultry Fed., E.S. Good Barn, Univ. of Kentucky, Lexington, KY 40546 (606)257-2694
- Kentucky Beef Cattle Ass'n, 733 Red Mile Rd., Lexington, KY 40504-1153 (606)233-3722
- Dairy Council of the Southeast, Louisville, (502)451-9837
- Kentucky Pork Producers Ass'n, 615 Mulberry ST., Elizabethtown, KY 42701 (502)737-5665



— Kentucky Dept. of Environmental Protection, Ft. Boone Plaza, 18 Reilly Road, Frankfort, KY 40601 (502)564-3382

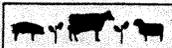
**LOUISIANA** La. Rev. Stat. Ann. §§3601- 3607 (West 1987)

Louisiana courts have considered several nuisance cases involving agricultural facilities. Bankston v. Farmers Cooperative Gin, 116 So. 2d 91 (La Ct. App. 1959), held a cotton gin was no longer a nuisance due to modifications but had previously caused \$400 damages to a neighbor's home. In 1983, Louisiana adopted a very extensive right to farm law that extends nuisance suit protection to both agricultural production activities and agricultural facilities which provide marketing, processing, or agricultural support services, including such things as cotton ginning and fertilizer and chemical application. The law establishes as state policy that persons who are engaged in agricultural operations in accordance with generally accepted agricultural practices [GAAP's] should be protected from legal actions brought by persons who subsequently acquire an interest in any land in the vicinity. The law establishes a legal presumption that anyone engaged in agricultural production is following generally accepted agricultural practices. No agricultural operation can be deemed a nuisance if it is conducted in accordance with GAAP's and the person bringing the action acquired the interest in the land alleged to be affected by the nuisance after the date on which the agricultural operation began or if the agricultural operation was established prior to any change in the character of the property in the vicinity of the operation.

The nuisance protection does not apply to actions based on negligence, intentional injury, or violations of state or federal law or rules. The law restricts the ability of parish governing authorities to adopt ordinances that would declare an agricultural operation a nuisance or any zoning ordinance that would force the closure of such an operation. Parish authorities may, however, regulate agricultural operations which do not follow GAAP's or are operated negligently. Municipal ordinances do not apply to agricultural operations which were established outside the corporate limits of the municipality and which were later annexed into the municipality. The law also provides for fee shifting if a nuisance claim is frivolous. A 1988 case, Day v. Warren, 524 So. 2d 1383 (La. Ct. App. 1988), involving a nuisance claim against a dairy is discussed at p. 55.

Resources

- Louisiana Farm Bureau Fed., Inc., 9516 Airline Highway, Baton Rouge, LA 70815 (504)922-6200
- Louisiana Poultry Industries, Inc., LSU, Knapp Hall Room 241, Baton Rouge, LA 70803 (504)388-8667
- Louisiana Cattlemen's Ass'n, 492 I-10 Service Road W, Port Allen, LA 70787 (504)343-3491
- Louisiana Pork Producers Ass'n, P.O. Box 1223, Oak Grove, LA 71263 (318)428-2980
- Louisiana Dept. of Environmental Quality, P.O. Box 44066, Baton Rouge, LA 70804 (504)342-9103



**MAINE** Me. Rev. Stat. Ann. tit. 17 §2805 (West 1983)

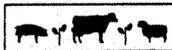
In 1981 Maine enacted a statute which provides farm operations with a defense to nuisance suits if they conform to generally accepted agricultural practices [GAAP's]. The Maine Commissioner of Agriculture, Food and Rural Resources determines the GAAP's. A farm is defined as the land buildings and machinery used in the commercial production of farm products, which include "dairy products, poultry and poultry products, livestock and livestock products." Protected incidents of farm operation include but are not limited to "noise, odors, dust, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners and pesticides and the employment and use of labor."

In order to be protected by Maine's law the farm operation must have been in existence before a change in the land use or occupancy of land within one mile of the farm operation and not have been a nuisance before that change in land use or occupancy. The law does not effect the operation of state or federal statutes. The law on "generally accepted manure handling practices" is discussed at p. 35. The right to farm law was raised in an effort to modify a trial court order under an agreement between the parties in *Clifford v. Klein*, 463 A.2d 709 (Me. 1983). The order prevented the Cliffords from piling manure within 1,500 ft. of the Klein's residence. The Clifford's sought modification to allow them to pile within 300 ft., claiming to do so was a generally accepted agricultural practice. The court rejected the request because the Clifford's had not shown the modification was the result of a change in the facts. There are no other reported cases on the law.

In 1989, Maine enacted a registration of farmland statute, Me. Rev. Stat. Ann. tit. 7 §§51-59 (1990). The law prohibits the development or use of land within 100 ft. of registered farmland in a manner inconsistent with agricultural use of the registered farmland. Inconsistent development or use is defined to include residential buildings; public or private wells, drinking water springs and water supply intake points; school buildings and playgrounds; commercial establishments dispensing or selling food; and public and commercial campgrounds and picnic areas. Use or development of land is exempt from the law if it was in effect prior to the registration of the farmland. An owner of land seeking to register land as farmland need only notify the abutting landowners of the registration. Their permission or approval is not needed. The seller of land abutting registered farmland must disclose that the land abuts registered farmland in the purchase and sale agreement or in writing prior to the sale.

Resources

- Maine Farm Bureau Ass'n, P.O. Box 430, 478 Western Avenue, Augusta, ME 04330 (207)622-4111
- Maine Poultry Fed., P.O. Box 228, Augusta, ME 04330 (207)622-4443
- Maine Dairy Council, Augusta (207)289-3621
- Maine Hog Growers Ass'n, Route #1, Box 364, Bradford, ME 04410 (207)327-1237



– Maine Dept. of Environmental Protection, State House Station 17, Augusta, ME 04333 (207)389-7688

**MARYLAND** Md. Cts. & Jud. Proc. Code Ann. §5-308 (1989)

In 1981 Maryland enacted a right to farm law which provides that an agricultural operation which has been "under way" for a period of one year or more and was not a nuisance when began may not become a public or private nuisance. The law does not protect operations which are conducted in a negligent manner or do not conform to federal, state, or local laws pertaining to air, water quality, or environmental standards or federal, state, or local health or zoning requirements. The Maryland law lists several types of farm operations covered by the statute. In 1986 the list was amended to include the production of bees and their products. The statute was also amended to add a clause that provides that a private action may not be sustained on the grounds the operation interferes with the use or enjoyment of other property, whether public or private. The Maryland law has not been interpreted in any reported cases.

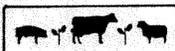
Resources

- Maryland Farm Bureau, Inc., 8930 Liberty Road, Randallstown, MD 21133 (301)922-3426
- Delmarva Poultry Industry, Inc., Rt. 2, Box 47, Georgetown, DE 19947-9622 (302)856-9037
- Maryland Cattlemen's Ass'n, Univ. of Maryland, 1129 Animal Science Center, College Park, MD 20742 (301)405-1394
- Maryland Pork Producers Ass'n, 53 Slama Road, Edgewater, MD 21037 (301)956-5771
- Maryland Dept. of the Environment, 2500 Broening Highway, Baltimore, MD 21224 (301)631-3084

**MASSACHUSETTS** Mass. Gen. Laws Ann. ch. 111 §125A (West 1991)  
Mass. Gen. Laws Ann. ch. 243 §6 (West 1991)

In *Pendoley v. Ferreira*, 187 N.E.2d 142 (Mass. 1963), the Ferreira piggery, started in 1949 in what was then a rural area near Topsfield, became one of the earliest victims of urban sprawl. Between 1954 and 1959 over 300 houses were built nearby with at least 30 new houses near the Ferreira's piggery. A group of homeowners sued the Ferreriras for nuisance. The trial court found they had been damaged and awarded them \$2665.88. The court enjoined the Ferreriras from "operating their piggery in such an unreasonable manner as to cause a stench to emanate therefrom which materially interferes with the reasonable enjoyment of a large number of people living in the vicinity..." The Supreme Judicial Court of Massachusetts said the injury the injunction caused the Ferreriras was economic while the homeowner's injury was a material interference with their "right to the day-to-day use and comfort of the places where they lived." The court found the damages appropriate and ordered a permanent injunction, but gave the Ferreriras time to minimize the loss.

In 1979 Massachusetts adopted a right to farm law, amended in 1985, which limits the ability of the board of health to determine that a farm is a nuisance [ch. 111 §125A]. The law provides any action by the board of health to abate a



farm on the basis of nuisance is subject to the following:

The odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.

In 1987 Massachusetts added a second statute aimed at protecting farm operations from nuisance suits [ch. 243 §6], which provides that "no action in nuisance may be maintained against any person or entity resulting from the operation of a farm or any ancillary or related activity thereof...." The protection only applies to "ordinary aspect[s] of said farming operation," and the farming operation must have been in operation for more than one year. Nuisance actions arising out of negligent operation or non-generally accepted agricultural practices are not protected. The definitions of "agriculture" and "farming" are quite broad. There have been no reported judicial interpretations of either law.

#### Resources

- Massachusetts Farm Bureau Federation, Inc., P.O. Box 651, Great Road, Bedford, MA 01730 (617)275-4374
- Massachusetts Poultry Ass'n, 22 Kimball Place, Fitchburg, MA 01420 (508)345-4103
- Massachusetts Dept. of Environmental Quality, 1 Winter St., Boston, MA 20108 (617)292-5500

#### **MICHIGAN** Mich. Comp. Laws Ann. §286.471 (West 1991)

Michigan has seen many agricultural nuisance suits, beginning with a series of cases from the 1940's in which the Michigan courts found hog operations feeding garbage and food waste to be private nuisances. In *Fortin v. Vitali*, 167 N.W.2d 355 (Mich. Ct. App. 1969), the Michigan Court of Appeals rendered an important decision for agriculture when it ruled that although odors from the manure composting operations of several mushroom farms were a private nuisance, it would be inequitable to enjoin the operations because they had been there long before the plaintiffs moved into the area. The court ordered the defendants to explore ways to eliminate the odor.

In 1981 Michigan adopted a right to farm law which provides that as long as a farm operation follows generally accepted agricultural and management practices [GAAMP's], existed before a change in land use or occupancy within one mile of the boundaries of the farm, and was not a nuisance before the change in land use or occupancy, it could not be found to be a private or public nuisance. The law is discussed at p. 26.

Several recent cases have interpreted Michigan's right to farm law. In 1982, in *Rowe v. Walker*, No. 81-228769 (6th Cir. April 14, 1982), a local district court ruled the statute was constitutional and did not deprive property owners of their property without due process. In 1986, the Michigan Court of Appeals in *Village of Peck v. Hoist*, 396 N.W.2d 536 (Mich. Ct. App. 1986), decided the



statute did not prevent a local government from enforcing an ordinance requiring owners of buildings within the community to use the public sewer system. Two recent cases have interpreted the law. *Northville Township v. Coyne*, 429 N.W.2d 185 (Mich. Ct. App. 1988), concerning a barn is discussed at p. 46. *Jerome Township v. Melchi*, 457 N.W.2d 52 (Mich. Ct. App. 1990), concerning an apiary is discussed at p. 46.

#### Resources

- Michigan Farm Bureau, 7373 W. Saginaw Highway, P.O. Box 30960, Lansing, MI 48909-8460 (517)323-7000
- Michigan Cattlemen's Ass'n, P.O. Box 387, De Witt, MI 48820-0387 (517)669-8589
- Michigan Dairy Council, Okemos (517)349-8480
- Michigan Pork Producers Ass'n, 4265 Okemos Road, Suite C, Okemos, MI 48864-3285 (517)347-0850
- Michigan Dept. of Natural Resources, P.O. Box 30028, Lansing, MI 48909 (517)373-1214

#### MINNESOTA Minn. Stat. Ann. §561.19 (West 1988)

The Minnesota courts have considered questions of nuisance and agriculture several times, including a 1975 case, *Schrupp v. Hanson*, 235 N.W.2d 822 (Minn. 1975). The Minnesota Supreme Court held if a poultry farm was a private nuisance the neighbors were entitled to relief regardless of the impact the ruling might have on other poultry operations in the country. The trial jury had found the operation not to be a nuisance, but the Supreme Court ordered a new trial because the jury had been too concerned about the impact of such a decision on other facilities.

In 1983 Minnesota adopted a right to farm statute providing public and private nuisance suit protection to agricultural operations, including facilities for the production of "livestock, poultry, dairy products, or poultry products." Facilities for the processing of agricultural products are specifically excluded from the protections. To qualify for protection the agricultural operation must be a part of a family farm, must have been in place for six years, and not have been a nuisance when it began. The law provides the protection does not apply in five circumstances:

- a) to a condition or injury which results from negligent or improper operation of an agricultural operation or from operations contrary to commonly accepted agricultural practices or applicable state or local laws, ordinances, rules, or permits;
- b) when an agricultural operation causes injury or direct threat of injury to the health or safety of any person;
- c) to pollution of, or change in the condition of, the water of the state or the overflow of waters on the lands of any person;



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d) to an animal feedlot facility with a swine capacity of 1,000 or more units as defined in the rules of the pollution control agency for control of pollution from animal feedlots; or a cattle capacity of 2,500 animals or more; or

e) to any prosecution for the crime of public nuisance as provided in section 609.74 or to an action by a public authority to abate a particular condition which is a public nuisance.

The Minnesota statute, including the provision limiting the size of swine facilities qualifying for protection, has not been the subject of any court determination. However, in a 1990 case, Jerome Faribo Farms v. County of Dodge, 464 N.W.2d 568 (Minn. Ct. App. 1990), the Minnesota Court of Appeals held the neighbors of a proposed turkey facility had a right to intervene in a county proceeding to issue a permit to the facility. When the permit was denied, Jerome Faribo Farms sought to force the county to issue the permit. The neighbors tried to intervene on the side of the county but the trial court denied permission. The Minnesota Court of Appeals reversed, holding the interest of the neighbors would not be adequately represented because their concern about devaluation of the property were not shared by the county.

### Resources

- Minnesota Farm Bureau Fed., 1976 Wooddale Drive, P.O. Box 64370, St. Paul, MN 55164 (612)739-7200
- Minnesota State Cattlemen's Ass'n, 2950 Metro Drive, #211, Minneapolis, MN 55425-1561 (612)854-6980
- Minnesota Turkey Growers Ass'n, 678 Transfer Road, St. Paul, MN 55114 (612)646-4553
- Dairy Council of Minnesota, St. Paul (612)488-0261
- Minnesota Pork Producers Ass'n, 360 Pierce Ave., Suite 106, North Mankato, MN 56003 (507)345-8814
- Minnesota Pollution Control Agency, 3rd Floor, Centennial office Building, 658 Cedar St., St. Paul, MN 55155 (619)296-9027

### **MISSISSIPPI** Miss. Code. Ann. 95-3-29 (1990)

In 1980 Mississippi enacted a right to farm statute which provides agricultural operations, including facilities for the production and processing of "livestock, farm raised fish and fish products, livestock products, and poultry or poultry products for commercial or industrial purposes," with protection from nuisance suits. The law provides that "in any nuisance action, public or private, against an agricultural operation, proof that the said agricultural operation has existed for one year or more is an absolute defense to such action, if the conditions or circumstances alleged to constitute the nuisance have existed substantially unchanged since the established date of operation." The law works as a statute of limitations on nuisance suits against agricultural operations. Expansion of the operation is protected but each expansion has a separate established date of operation. The separate established date for expansion does not affect the established date of the original operation. There is one exception, the law provides it does not affect any provision of the Mississippi Air and Water Pollution Control Law. The law has not been the subject of any reported cases.



Resources

- Mississippi Farm Bureau Fed., P.O. Box 1972, 6310 I-55 North, Jackson, MS 39211 (601)957-3200
- Mississippi Poultry Ass'n, Inc., Box 13309, Jackson, MS 39236-3309 (601)355-0248
- Mississippi Cattlemen's Ass'n, 121 N. Jefferson St., Jackson, MS 39201-2804 (601)354-8951
- Mississippi Pork Producers Ass'n, Rt. 4, Box 249, Pontotoc Branch Exp. Station, Pontotoc, MS 38863 (601)489-4621
- Mississippi Office of Pollution Control, Dept. of Environmental Quality, Southport Center, 2380 Highway 80 West, P.O. Box 10385, Jackson, Ms 39289-0385 (601)961-5171

**MISSOURI** Mo. Rev. Stat. §537.295 (1991)

Missouri courts have considered several nuisance actions against swine operations. In Bower v. Hog Builders, 461 S.W.2d 784 (Mo. 1970), the Missouri Supreme Court upheld an award of more than \$135,000 in actual and punitive damages to two neighbors of a large swine facility whose waste handling practices were determined to be a nuisance; however, operation of the 3,800 hog facility was not enjoined. In Meinecke v. Stallsworth, 483 S.W.2d 633 (Mo. Ct App. 1972), the Missouri Court of Appeals affirmed a trial court determination that odors from a hog farm were not an enjoined nuisance, based in part on the fact there were similar operations in the area.

In 1982, Missouri enacted a right to farm statute which provides that an agricultural operation cannot be deemed to be a nuisance due to changed conditions in the locality if the operation was not a nuisance when it began and has been in operation for more than one year. Nuisances which result from negligent or improper operation are not protected by the law. The law does not affect claims that arise from the pollution of or change in the quantity or quality of any water used by a person or firm for private or commercial purposes. Agricultural operations which were located within the limits of any city on August 13, 1982, are not covered by the law. In 1990 Missouri added language to allow reasonable expansion of an agricultural operation to be protected from nuisance suits just as the original operation was protected. This provision, discussed at p. 31, was in part a response to the Glossmeyer case, discussed at p. 23. The 1990 amendment also included fee shifting for frivolous agricultural nuisance suits. The law has not been the subject of any reported court determinations.

Resources

- Missouri Farm Bureau Fed., 701 S. Country Club Drive, Jefferson City, MO 65109 (314)893-1400
- Missouri Poultry Fed., 2100 Broadway, Room 319, Columbia, MO 65201 (314)874-1921
- Missouri Cattlemen's Ass'n, P.O. Box 315, Ashland, MO 65010-0315 (314)657-2169
- Missouri Pork Producers Ass'n, Route 11, 6235 Cunningham Drive, Columbia, MO 65202 (314)445-8375



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— Missouri Dept. of Natural Resources, Div. of Environmental Quality, P.O. Box 176, Jefferson State Office Bldg. Jefferson City, MO 65192 (314)751-3332

**MONTANA** Mont. Code Ann. §27-3-101(3) (1989)  
Mont. Code Ann. §45-8-111(c)(4) (1989)

Montana's right to farm law, enacted in 1981, states that "No agricultural or farming operation, place or establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public or private nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place or establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation." The effect of the law, which has not been considered by the courts, is to provide nuisance protection to agricultural operations based on when the operation began relative to the complaining party. The agricultural operation need only have been established before the complaining party moved nearby.

Resources

- Montana Farm Bureau Fed., 502 South 19th, Bozeman, MT 59715 (406)587-3153
- Montana Cattle Feeders Ass'n, P.O. Box, 60759, Billings, MT 59624-1679 (406)248-3681
- Montana Stockgrowers Ass'n, P.O. Box 1679, Helena, MT 59624-1679 (406)442-3420
- Montana Pork Producers Council, Montana State Univ., Linfield Hall, Room 409A, Bozeman, MT 59717 (406)994-3595
- Montana Dept. of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620 (406)444-3948

**NEBRASKA** Neb. Rev. Stat. §§2-4401 to 4404 (1987)

Nebraska has an active history of nuisance suits involving agriculture. A 1981 case, Botsch v. Leigh Land Co., 313 N.W.2d 696 (Neb. 1981), involved three separate trials and appeals on the question of whether a cattle feedlot was a nuisance. The Nebraska Supreme Court's final decision was that while it had been a nuisance, the odor problems had been corrected and the injunction against the operation must be lifted. In another 1981 case, Daughterty v. Ashton Feed and Grain Co., Inc., 303 N.W.2d 64 (Neb. 1981), the Nebraska Supreme Court agreed with a decision that noise from a grain company's fans and dryers was a nuisance and upheld an injunction limiting the hours and days of the week they could be operated. In Cline v. Franklin Pork Inc., 313 N.W. 2d 667 (Neb. 1981), the Nebraska Supreme Court reversed a lower court determination that odors from a hog facility with 800 sows and feeding 7,000 hogs which had once been a nuisance, were now abated and sent the matter back for a new trial. In 1982, while Cline was again before the lower court, Nebraska enacted a right to farm law which provides:

A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or



occupancy of land in or about the locality of such farm or farm operation and before such change in land use or occupancy of land the farm or farm operation would not have been a nuisance.

After a new trial in Cline, the trial court determined the hog facility was a nuisance and ordered it enjoined. The owners appealed relying on the new law, but the Nebraska Supreme Court in Cline v. Franklin Pork, 361 N.W.2d 566 (Neb. 1985), ruled the hog facility was a nuisance even though it was lawfully operated in a rural area. Cline and another nuisance action decided later in 1985, Flansburgh v. Coffey, 370 N.W.2d 127 (Neb. 1985), reaching the same conclusion, are both discussed at p. 56.

Resources

- Nebraska Farm Bureau Fed., P.O. Box 80299, 5225 South 16th St., Lincoln, NE 68512 (402)421-4400
- Nebraska Poultry Industries, Univ. of Neb., A-103 Animal Science, Lincoln, NE 68583 (402)472-2051
- Nebraska Cattlemen, 521 S. 14th #1, Lincoln, NE 68507-2707 (402)475-2333
- Nebraska Dairy Council, Ralston (402)592-3355
- Nebraska Pork Producers Ass'n, Inc., A-103 Animal Science, Univ. of Neb., Lincoln, NE 68583-0834 (402)472-2563
- Nebraska Dept. of Environmental Control, P.O. Box 98922, 301 Centennial Mall South, Lincoln, NE 68509 (402)471-2186

**NEVADA** Nev. Rev. Stat. Ann. §40.140 (Michie 1989)

The Nevada right to farm law, enacted in 1985, provides a presumption that an agricultural activity is reasonable and is not a nuisance if the activity is conducted on farmland, good agricultural practices are followed, and the activity was established prior to the establishment of surrounding non-agricultural activities. An agricultural activity may be a nuisance if the public health or safety are substantially effected. A good agricultural practice is one that does not violate federal, state, or local laws, ordinances, or regulations, meaning the law is ineffectual in the face of any conflicting law, ordinance, or regulation. There have been no reported cases dealing with agricultural nuisances or the Nevada right to farm statute.

Resources

- Nevada Farm Bureau Fed., 1300 Marietta Way, Sparks, NV 89431 (702)358-3276
- Nevada Cattlemen's Ass'n, 419 Railroad St., Elko, NV 89801-3717 (702)738-9214
- Nevada Pork Producers Ass'n, P.O. Box 953, Winnemucca, NV 89446 (702)623-5958
- Nevada Dept. of Conservation and Natural Resources, Div. of Environmental Protection, 201 South Fall Street, Carson City, NV 89710 (702)885-4670

**NEW HAMPSHIRE** N.H. Rev. Stat. Ann. §§432:32-35 (1990)

The Supreme Court of New Hampshire upheld a lower court's injunction of the manure handling practices of an egg producer in Gerrish v. Wishbone Farm, 231



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A.2d 622 (N.H. 1967). Wishbone Farm used what was characterized as an experimental lagoon system to dispose of the waste generated by the 80,000 chickens. The court rejected Wishbone's contention that because it had spent over \$100,000 on the disposal system the relative hardship of an injunction would be greater on them than on the plaintiffs. The court paraphrased the argument as being "because its smell is expensive, Wishbone argues in effect it should be allowed to continue its operation..." The court found no real attempt had been made to alleviate the odor therefore "to deny injunctive relief to the plaintiff...would give the defendant a right to maintain a nuisance by the fact of having established it." In 1985, New Hampshire enacted a right to farm law that provides an agricultural operation immunity from a nuisance suit due to changed conditions in or around the locality of the operation if the operation has been in existence for one year and was not a nuisance when it began. Operations which are injurious to the public health or safety are not protected by the statute. Negligent or improper operation likewise removes the protection of the law. Agricultural operations which conform to federal, state, and local laws, rules, and regulations are not negligent or improper under the law. The statute does not limit the duties and authority conferred on the water supply and control commission. There have been no recent reported cases interpreting the New Hampshire statute.

#### Resources

- New Hampshire Farm Bureau Fed., 295 Sheep Davis Road, Concord, NH 03301 (603)224-1934
- New England Dairy Council, Bedford (603)625-1677
- New Hampshire Pork Producers Council, P.O. Box 139, Lyme Center, NH 03769 (603)795-2870
- New Hampshire Dept. of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03301 (603)271-2975

#### **NEW JERSEY** N.J. Stat. Ann. §§4:1C-1 to 11 (West 1991)

There is little case law regarding agricultural nuisances in New Jersey. In 1964, the Superior Court of New Jersey decided Demarest v. Heck, 201 A.2d 75 (N.J. Super. Ct App. Div. 1964), involving the boarding of horses in a predominantly residential neighborhood. The court ruled boarding of horses was not agricultural and was therefore prohibited by the zoning regulations.

New Jersey's Agriculture Retention and Development Act, which became effective in 1983, authorizes a State Agricultural Committee, made up of six citizens appointed by the governor, four persons from state government, and the dean of Cook College, Rutgers University. Under the law, a commercial agricultural operation is given a rebuttable presumption of not being a nuisance if it is operating in conformity with the agricultural management practices recommended by the committee and all federal and state statutes, provided the operation does not pose a direct threat to public health and safety. A commercial farm is defined as an enterprise producing agricultural or horticultural products worth \$2,500 or more annually. The Agricultural Committee also has the power to purchase agricultural land for resale with deed restrictions for the purpose of farmland preservation. There have been no reported



interpretations of New Jersey's law.

Resources

- New Jersey Farm Bureau, The Farmhouse, 168 W. State St., Trenton, NJ 08608 (609)393-7163
- New Jersey Livestock Coop. Ass'n., 514 Cross Road, Salem, NJ 08079 (609)935-6766
- New Jersey Dept. of Environmental Protection, 401 East State St., Trenton, NJ 08625 (609)292-2885

**NEW MEXICO** N.M. Stat. Ann. §§47-9-1 to 4 (Michie 1982)

The New Mexico right to farm law, enacted in 1981, provides an agricultural operation "is not nor shall it become a public or private nuisance by any changed condition in or about the locality or such agricultural operation if such operation was not a nuisance when it began and has been in existence for more than one year." Negligent operation removes protection of the law as does a change in the operation that would cause a common law nuisance. Expansion or change in the operation will also remove any protection. Local ordinances or regulations that make a protected operation a nuisance do not apply to agricultural operations located within corporate limits of a municipality as of the effective date of the law, April 8, 1981. Agricultural operations which locate within corporate limits after that time presumably are subject to local regulations even if those regulations would declare an operation a nuisance.

A 1983 case, Scott v. Jordan, 661 P2d 59 (N.M. Ct. App. 1983), held a cattle feedlot a nuisance. Scott had resided in his home since 1966. Jordan purchased property across the road in 1979 and substantially expanded a feedlot operation. The court noted the feedlot was a nuisance due to the manner in which it was operated. The lower court's injunction was affirmed because the appellate court felt the continuous nature of the nuisance made monetary damages ineffective. The court did not discuss or interpret the New Mexico right to farm law, nor has any other case.

In 1991 the law was amended to add a stipulation that the established date of operation is the date on which the operation commenced. The established date of operation is not affected by any subsequent expansion, meaning expansion does not cause the operation to lose protection of the law. New Mexico enacted the same definitions for "agricultural facility" and "agricultural operation" as Georgia, see p. 29. The new definitions are a substantial change because the law formerly defined "agricultural operations" merely as "the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry, or fish." A section stating the act does not affect the right of a person to recover damages for injury caused by pollution or changes in the condition of waters of a stream or because of an overflow and a provision for fee shifting were also added.

Resources

- New Mexico Farm and Livestock Bureau, 421 N. Water St., Las Cruces, NM 88001 (505)526-5521



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- New Mexico Cattle Growers Ass'n, P.O. Box 7517, Albuquerque, NM 87194-7517 (505)247-0584
- New Mexico Health and Environment Dept., Environmental Improvement Div., 1190 St. Francis Drive, Santa Fe, NM 87503 (505)827-2850

**NEW YORK** N.Y. Pub. Health Law §1300-c (McKinney 1990)

In *Town of Mt. Pleasant v. Van Tassell*, 166 N.Y.S.2d 458 (N.Y. Special Term 1957), a New York court held raising 200 pigs in buildings on a 12 acre tract surrounded by residences was a public nuisance and violated the local zoning ordinances. In 1981 New York enacted a law providing:

Notwithstanding any other provision of law, the agricultural activities conducted on a farm... shall not be considered a private nuisance, provided such agricultural activities were commenced prior to the surrounding activities, have not increased substantially in magnitude or intensity and have not been determined to be the cause of conditions dangerous to life or health as determined by the commissioner, the local health officer or local board of health...

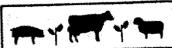
The definition of "farm," [N.Y. Lab. Law §671(1)] includes "stock, dairy, poultry, furbearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses, or other similar structures, used primarily for the raising of agricultural or horticultural commodities." While it appears New York's law might invalidate any law that would make an agricultural operation a nuisance, New York's right to farm law provides protection only from private nuisance suits. Other laws declaring an agricultural operation a public nuisance are not affected. A 1983 case, *Murray v. Young*, 468 N.Y.S.2d 759 (N.Y. App. Div. 1983), held a complaining party was not precluded from bringing an action against a veal producer, reversing the lower court. The court did not interpret the right to farm law and there have been no other reported cases. In 1991 a legislative attempt to amend the New York law to use the GAAMP approach was not enacted.

Resources

- New York Farm Bureau, Inc., Route 9 West, P.O. Box 922, Glenmont, NY 12077-0992 (518)436-8495
- New York Beef Cattlemen's Ass'n, RR 1, Box 162, Addison, NY 14801-9754 (607) 359-3662
- New York Dairy Council, Syracuse (315)475-2721
- New York Pork Producers Coop. Inc., 2436 Highland Road, Lyons, NY 14489 (315)946-4730
- New York Dept. of Environmental Conservation, 50 Wolf Road, Albany, NY 12233 (515)457-5400

**NORTH CAROLINA** N.C. Gen. Stat. §§106-700 to 701 (1990)

North Carolina enacted a right to farm law in 1979, discussed on p. 23, protecting agricultural operations from nuisance suits due to changes in the locality if an operation has existed for at least one year and was not a nuisance when it began. The law does not protect operations run in a negligent or improper manner, nor does it affect the right of recovery for damages due to



pollution or change in the condition of a stream or damage caused by the overflow of lands. The law also renders void any local ordinances which make agricultural operations nuisances; however, operations which were located within the corporate limits of a city on the date of enactment of the law, March 26, 1979, are subject to local ordinances. The effect this has on operations not located within the city limits on March 26, 1979, but which now are, is not clear.

A 1983 case, Baucom's Nursery v. Mecklenburg County, 303 S.E.2d 236 (N.C. Ct. App. 1983), dealt with the effect of local zoning on a nursery. The court held in favor of the nursery concerning use of a 19.6 acre tract zoned for residential use because the state law granting the zoning power specifically withheld power to zone land used for farming. The court said the nursery was a bona fide farm. Two years later, in Mayes v. Tabor, 334 S.E.2d 489 (N.C. Ct. App. 1985), discussed at p. 57, the same court ruled a hog farm adjacent to a campground was a nuisance. There have been no other reported cases on the law.

#### Resources

- North Carolina Farm Bureau Fed., 5301 Glenwood Ave., P.O. Box 27766, Raleigh, NC 27611 (919)782-1705
- North Carolina Poultry Fed., 4020 Barrett Drive #102, Raleigh, NC 27609-6624 (919)783-8218
- North Carolina Cattlemen's Ass'n, P.O. Box 25758, Raleigh, NC 27611-5756 (919)832-0235
- North Carolina Pork Producers Ass'n, Inc., 156 Mine Lake Court, Raleigh, NC 27615 (919)846-9758
- North Carolina Dept. of Environment, Health, and Natural Resources, P.O. Box 27687, 512 Salisbury St., Raleigh, NC 27611-7687 (919)733-4996

#### **NORTH DAKOTA** N.D. Cent. Code §§42-04-01 to 05 (1983)

North Dakota's right to farm law provides if an agricultural operation was not a nuisance when it began, has been in operation for at least one year, and is not operated negligently or improperly, then changed conditions in or about the locality of the operation do not make it a public or private nuisance. Local ordinances making an agricultural operation a nuisance or forcing it to close are void under the law. Agricultural operations located within the corporate limits of a city as of July 1, 1981, are not protected by this provision. If agricultural operations want to be protected from local ordinances, they should not locate within city limits and should resist attempts by the city to annex them.

The statute has been discussed twice by the North Dakota Supreme Court. In Jerry Harmon Motors v. Farmers Union Grain Terminal Association, 337 N.W.2d 427 (N.D. 1983), Harmon Motors complained dust and chaff from a feed milling operation increased the cost of keeping its cars clean. The court characterized the case as a coming to the nuisance because the feed mill had been operating since 1958 and Harmon Motors only since 1975. Although the right to farm statute did not control because it was not retroactive, the court said, "it contains a clear sense of direction we cannot ignore regarding agricultural business or enterprises in this state." The court ruled the feed mill was not a



private nuisance and overturned the lower court's award of damages.

In Knoff v. American Crystal Sugar, 380 N.W.2d 313 (N.D. 1986), Knoff alleged American Crystal's waste water lagoons were a nuisance damaging his adjacent crop land. The trial court found the right to farm law applied but the North Dakota Supreme Court reversed, concluding:

We do not believe that it was the intent of the legislature when it created protections for "agricultural operations" to encompass remote preparation and marketing of such products by large national corporations. It would be the ultimate irony to construe the statute to prohibit an action by a North Dakota family farmer against a large corporation for damaging his land.

The court cautioned that Harmon Motors should not be read as an indication all farm related corporations are protected under the law. The court also distinguished negligence and nuisance, pointing out that lack of negligence is not a guarantee of a lack of nuisance. There have been no recent cases on the law.

#### Resources

- North Dakota Farm Bureau, 1101 1st Ave., North, P.O. Box. 2064, Fargo, ND 58107 (701)237-9717
- North Dakota Stockmen's Ass'n, 407 South 2nd St., Bismarck, ND 58504-5535 (701)223-2522
- North Dakota Dairy Council, Bismarck (701)224-3134
- North Dakota Pork Producers Council, Rt. #1, Box 77, Regent, ND 58650 (701) 563-4513
- North Dakota Dept. of Health, Environmental Health Section, 1200 Missouri Ave., P.O. Box 5520, Bismarck, ND 58502 (701)224-2374

**OHIO** Ohio Rev. Code Ann. §929.04 (Anderson 1988)  
Ohio Rev. Code Ann. §3767.13(D) (Anderson 1988)

Ohio's right to farm protections are contained in two different statutes. First, the law provides an exemption from the prohibition of keeping animals which "by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals or the public" and the prohibition of causing or allowing offal or filth or noisome substances to be collected or remain in any place to the damage or prejudice of others or the public." [§3767.13(D)] This exemption is available to persons who are engaged in "agriculture-related activities" and who conduct those activities outside of a municipal corporation in accordance with generally accepted agricultural practices [GAAP's]. The activities are also exempt from ordinances or enactments by a subdivision of the state which prohibit excessive noise; however, to be exempt the activities must not have an adverse affect on public health, safety, and welfare.

Second, Ohio law contains a complete defense against nuisance actions for agricultural operations located within an agricultural district, if: 1) the agricultural operation is conducted in accordance with GAAP's, 2) was established before the complaining party's interest or activity was established, and 3) the com-



plaining party is not involved in agriculture. [§929.04]. Agricultural activities in violation of federal, state, and local law or rules are not protected under the statute. To establish an agricultural district the owner of agricultural land must apply to the county auditor. The tract of land must contain at least thirty acres or the agricultural activities must have produced an average yearly income of \$2500 for the preceding three years or the owner must have evidence of that much anticipated income from the land. The land must have been devoted exclusively to agricultural production or been enrolled in farm programs during the three years preceding the application. The application must be renewed every five years. In an unpublished opinion, Myers v. Council of the Village of Spencer, C.A. No. 1479 (1986), the Court of Appeals held neighbors' fears a kennel would not be subject to a nuisance suit were not sufficient to prevent approval of an application to form an agricultural district when the land met all of the requirements. In Reeser v. Weaver Bros., Inc., 560 N.E.2d 819 (Ohio Ct. App. 1989), the court found a nuisance existed when chicken wastes killed the neighbor's fish. Reesers owned two lakes fed by the watershed upon which Weaver's three chicken houses were located. In June 1986 all the fish in the lakes died and the lakes were polluted with floating scum, some of which was observed coming from a drainage tile running through Weaver's property. Reeser's brought suit in part based on nuisance, but the right to farm statute was not discussed in the appeal. No reported cases have interpreted Ohio's right to farm laws.

#### Resources

- Ohio Farm Bureau Fed., Inc., Two Nationwide Plaza, P.O. Box 479, Columbus, OH 43216-0479 (614)249-2400
- Ohio Poultry Ass'n, 674 W. Lane Ave., Columbus, OH 42310 (614)292-2089
- Ohio Cattlemen's Ass'n, P.O. Box 645, Westerville, OH 43081-0645 (614)898-7771
- Ohio Dairy Council, Columbus (614)890-1800
- Ohio Pork Producers Council, 135 Allview Road, Westerville, OH 43081 (614)882-5887
- Ohio Environmental Protection Agency, 1800 WaterMark Drive, P.O. Box 1049, Columbus, OH 43266-0149 (614)644-2782

**OKLAHOMA** Okla. Stat. Ann. tit. 2 §9-210 (West 1973)  
Okla. Stat. Ann. tit. 50 §1.1 (West 1988)

Oklahoma has one of the earliest right to farm laws. In 1969 Oklahoma enacted a bill which provides if licensed feedlots comply with regulations made by the Oklahoma State Board of Agriculture this is *prima facie* evidence a nuisance does not exist, if the feedlot is not violating zoning regulations. In 1980, the Oklahoma Legislature enacted a similar provision which applies to a wider range of agricultural operations. Agricultural activities consistent with good agricultural practices are presumed to be reasonable and do not constitute a nuisance if they are conducted on farm or ranch land and were established before nearby nonagricultural activities. Activities in conformity with federal, state, and local laws and regulations are presumed to be good agricultural practices and to not adversely affect the public health and safety. Activities which have a substantial adverse effect on public health and safety are not



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granted the presumption. No Oklahoma cases dealing with agricultural nuisance have been reported.

### Resources

- Oklahoma Farm Bureau, P.O. Box 53332, 2501 North Stiles, Oklahoma City, OK 73105-3196 (405)523-2300
- Oklahoma State Poultry Fed., P.O. Box 357, Hartshorne, OK 74547 (918)297-7219
- Oklahoma Cattlemen's Ass'n, P.O. Box 82395, Oklahoma City, OK 73148-0395 (405)235-4391
- Oklahoma Pork Council, Rt. #1, Box 254, Depew, OK 74028 (918)324-5826
- Oklahoma Dept. of Health, P.O. Box 53551, 1000 N.E. 10th St., Oklahoma City, OK 73152 (405)271-5204
- Oklahoma Water Resources Board, P.O. Box 53585, 1000 N.E. 10th St., Oklahoma City, OK 73152 (405)271-2541

**OREGON** Or. Rev. Stat. §§30. 930-947 (1989)  
Or. Rev. Stat. §467.120 (1989)

In 1970 property owners living near a cattle feedlot owned by Organic Fertilizer Co., formed an organization and sued, claiming the feedlot was a nuisance and asked for an injunction to close it. Spencer Creek Pollution Control Ass'n v. Organic Fertilizer Co., 505 P.2d 919 (Or. 1973). The trial court found the feedlot was a nuisance and issued an injunction limiting the number of animals and requiring waste management and nuisance control plans be carried out. The court awarded damages to landowners whose land had been affected by waste from the feedlot. The Supreme Court of Oregon upheld the lower court, ruling that even though the feedlot pre-dated the neighbors, because there was no finding the feedlot was a nuisance when the neighbors moved to the area, the court could not say they came to the nuisance. In a 1978 case Jewett v. Deerhorn Enterprises, 575 P.2d 164 (Or. 1978), discussed at p. 11, the Oregon Supreme Court upheld the permanent injunction of a hog facility operated in a rural residential area using converted greenhouses.

In 1981, Oregon enacted a statute which provides a farming practice shall not be held to be a private or public nuisance unless the nuisance results from negligent operation, or is due to raising diseased or infested crops or livestock. Local ordinances that make a farming practice a nuisance are not applicable. Statutes or rules that: 1) concern other than nuisances, 2) do not explicitly prohibit or regulate a farming practice as a nuisance, or 3) which are concerned with protecting public health or safety, are applicable. The practice of producing sounds to frighten birds is not protected, although agricultural operations are exempted from the noise control law. [§467.120 (1989)]

### Resources

- Oregon Farm Bureau Fed., 1701 Liberty St., S.E., Salem, OR 97302-5158 (503)399-1701
- Oregon Poultry Industry Ass'n, P.O. Box 3003, Portland, OR 97208 (503)777-1320



- Oregon Cattlemen's Ass'n, 729 NE Oregon St. #190, Portland, OR 97232-2107 (503)238-7400
- Oregon Dairy Council, Portland (503)229-5033
- Oregon Pork Producers Council, 7975 Spring Valley Road, Salem, OR 97304 (503)371-0480
- Oregon Dept. of Environmental Quality, 811 S.W. Sixth Ave., Portland, OR 97204 (503)229-5696

## **PENNSYLVANIA**

Three separate laws protect Pennsylvania agricultural operations from nuisance suits: 3 Pa. Cons. Stat. §§901-914; 3 Pa. Cons. Stat. §§951-957, and §§2200 and 2272.5

In 1981 Pennsylvania enacted the "Agricultural Area Security Law." [§§901-914], which prohibits a municipality or political subdivision from enacting any local law or ordinance which would unreasonably restrict farm structures or practices on any farm located in an Agricultural Security Area. Additionally, any local law which defines or prohibits a public nuisance must exclude from that definition normal agricultural practices on farms located within an Agricultural Security Area. The municipality or political subdivision retains the right to restrict activities which directly threaten the public health and safety.

In 1982 the legislature enacted a law giving nuisance protection to agricultural operations not located in an Agricultural Security Area [§§951-957]. Every municipality, defined to include a county, city, borough, incorporated town, township, or general purpose unit of government, is required to exclude normal agricultural operations from the definition of public nuisance. No nuisance claims are to be brought against an agricultural operation if it has been in operation for more than one year prior to the date of bringing the claim. Persons, firms, or corporations, however, may recover damages sustained due to an agricultural operation which is in violation of any federal, state, or local statute or regulation. While the heading reads "**§954 Limitation on public nuisances**" there is no mention of "public" in the text, meaning private nuisance claims may be prohibited as well. While local laws may not restrict normal agricultural practices, state and federal laws may, meaning an operation in violation of state law might be subject to a private nuisance suit.

The third law protecting farmers from public nuisance claims is found in the Mosquito Abatement Districts law, §2200(e), which provides if the agricultural practices are causing excessive domestic fly larval development the remedies for abatement are limited to those provided by the Mosquito Abatement law.

In *Boundary Drive Associates v. Shrewsbury Township Bd. of Supervisors*, 491 A.2d 86 (Penn. 1985), the Pennsylvania Supreme Court upheld a zoning ordinance which had farmland preservation as a goal. While the decision did not deal with the right to farm law, the court recognized the legitimacy of programs to preserve farmland.



Resources

- Pennsylvania Farmers Ass'n, P.O. Box 8736, 510 S. 31st St., Camp Hill, PA 17011 (717)761-2740
- Pennsylvania Poultry Fed., 500 Progress Ave., Harrisburg, PA 17109 (717)652-0230
- Pennsylvania Cattlemen's Ass'n, 9 E. River St., Ext. #B, Elkland, PA 16920-1218 (814)258-7283
- Pennsylvania Dairy Council, Southampton (215)322-0450
- Pennsylvania Pork Producers Council, 1631 Grim Road, Kutztown, PA 19530 (215)285-6519
- Pennsylvania Dept. of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120 (717)783-2300

**RHODE ISLAND** R. I. Gen. Laws §§2-23-1, -7 (1990).

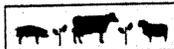
The Rhode Island Right to Farm Act, adopted in 1982, contains findings that agriculture is valuable to the state's economy and conflicts have arisen between agricultural land uses and urban land uses. The law establishes a policy of safeguarding agricultural operations against nuisance actions by expressly providing that certain alleged objectionable conditions are not nuisances if generally accepted farming practices are followed. The listed conditions include odors, noise from livestock or equipment, dust, and the use of pesticides, rodenticides, insecticides, herbicides or fungicides. The law includes provisions regarding the applicability of local ordinances, federal, or state laws, and an exception for farming practices conducted in a malicious or negligent manner. The Rhode Island Supreme Court decided Weida v. Ferry, 493 A.2d 824 (R.I. 1985), discussed at p. 48, involving a home near a dairy.

Resources

- Rhode Island Farm Bureau Fed., Inc., 1845 Post Road, Warwick, RI 02886 (401)737-5212
- Rhode Island Dept. of Environmental Management, 9 Hayes St., Providence, RI 02908 (401)277-2771

**SOUTH CAROLINA** S.C. Code Ann. §§46-45-10, -50 (Law Co-op 1990).

The South Carolina right to farm law, effective May 30, 1980, generally protects agricultural operations from nuisance suits. The Type A law follows the "one-year" format. An agricultural operation does not become a nuisance due to a changed condition of the locality if the farm has existed for at least one year and was not a nuisance when it began. This protection does not apply when the farm is operated negligently or improperly. Under the law an operator may still be liable for damages caused by the pollution or change in condition of streams due to the farming operation. Any local ordinances which make an agricultural operation a nuisance are null and void, except when the farm is located within the corporate limits of a city. The South Carolina law was amended in 1990 to add several new definitions, identical to those passed in Georgia in 1989, discussed at p. 29. There are no South Carolina cases on either agricultural nuisance or the new law.



Resources

- South Carolina Farm Bureau, 724 Knox Abbott Drive, Cayce, S.C. 29033 or P.O. Box 754, Columbia, SC 29202 (803)796-6700
- South Carolina Poultry Fed., 1201 Main, Suite 1220, Columbia, SC 29201 (803)748-1283
- South Carolina Cattlemen's Ass'n, Clemson Univ., P & A's Bldg. #145, Clemson, SC 29634 (803)656-3424
- South Carolina Pork Board, P.O. Box 11280, Columbia, SC 29211 (803)734-4067
- South Carolina Dept. of Health and Environmental Control, 2600 Bull St., Columbia, SC 29201 (803)734-4750

**SOUTH DAKOTA** 1991 S.D. ALS 151 [added in 1991]

South Dakota was the last state to enact a right to farm law. In 1987 the state enacted fee shifting, providing the farm operation existed continuously prior to the suit and was located within one mile of the plaintiff's land use or occupancy. In 1991 South Dakota passed a full fledged right to farm law complete with a statement of purpose and a definition of the term "agricultural operation and its appurtenances." Included in that bill is a provision that the costs, expenses and attorney's fees shall be recovered by the defendant should an agricultural nuisance suit be found frivolous by the court. South Dakota's law allows for reasonable expansion so long as all environmental codes are followed and waste handling capabilities meet or exceed standards set by the state department of agriculture. Protected status is assignable, alienable, and inheritable and is not lost by a temporary cessation or a reduction in the size of the operation.

The definition of "agricultural operation" covers both production and processing of crops, timber, livestock, swine, poultry, livestock products, swine products, or poultry products. The law contains an exemption from nuisance suit protection in the case of water pollution or overflow of land owned by another. The act does not apply to agricultural operations located within the limits of an incorporated municipality on January 1, 1991. Section 2 of the law seeks specifically to prevent agricultural operations from being deemed nuisances by changed conditions in the locality of the operation. Farms which locate within the limits of an incorporated municipality after January 1, 1991, need only to not be a nuisance when they begin operation and to continue in operation for one year to be protected from nuisance suits. A 1985 case involved damages caused by draining a neighbor's slough, but the main issue was a procedural question. *Lee v. Schultz*, 374 N.W.2d 87 (S.D. 1985). The South Dakota courts have not reviewed the new law.

Resources

- South Dakota Farm Bureau Fed., P.O. Box 1426, 2225 Dakota Ave. South, Huron, SD 57350 (605)352-6731
- South Dakota Cattlemen's Ass'n, HC 2 Box 86, Turton, SD 57477-9354 (605)897-6678
- South Dakota Stock Growers Ass'n, 426 Saint Joe St., Rapid City, SD 57701-2715 (605)342-0429



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- South Dakota Pork Producers Council, Box 326, Madison, SD 57042 (605)256-4501
- South Dakota Dept. of Water and Natural Resources, Joe Foss Building, 523 East Capitol Ave., Pierre, SD 57501 (605)773-3151

**TENNESSEE** Tenn. Code Ann. §§44-18-101 to 104 (1987)  
Tenn. Code Ann. §§43-26-101 to 104 (1990)

In 1979 Tennessee passed a right to farm law making feedlots, dairy farms, and egg production houses not nuisances if they comply with applicable rules of the department of health and environment. Rules in effect prior to the enactment are still applicable to facilities established prior to the law; however, rules enacted after enactment do not apply to earlier established facilities. All current rules apply to facilities established after the enactment of the law. To claim nuisance suit protection a facility must comply with applicable zoning regulations, based on the enactment date of the law and the establishment date of the facility. Zoning regulations do not become applicable to a facility by incorporation or annexation after the facility has been established. Compliance with the applicable environmental rules and zoning constitutes an absolute defense in a nuisance action brought by anyone whose ownership or use of property is subsequent to the establishment of the facility.

In 1982 Tennessee adopted another right to farm law applying to a wider range of agricultural operations. The law creates a rebuttable presumption that an agricultural operation is not a public or private nuisance if the operation conforms to regulations promulgated by the Tennessee department of agriculture. Included in the covered operations are activities which cause dust, odors, fumes, and noise; the operation of irrigation pumps; ground and aerial seeding and spraying; the application of fertilizers, conditioners, insecticides, herbicides, and pesticides; and the employment and use of labor. There is also a rebuttable presumption that a farm is not a nuisance if it was not a nuisance before a change in the land use or occupancy of land within one mile of the boundaries of the farm.

In a 1987 case, *Myers v. King*, Slip Opinion No. 86-257-II (Tenn. App. 1987), the Tennessee Appeals Court considered a nuisance caused by the seepage of sludge from the sewage lagoon of the King Egg Farm into the Meyer's drinking water well. The court found the nuisance was a result of negligence and of a temporary nature; therefore, an injunction of the egg farm was not appropriate. The court awarded damages due to the contamination. Neither of Tennessee's right to farm laws were mentioned in the decision and no other agricultural nuisance cases have been reported.

Resources

- Tennessee Farm Bureau Fed., Inc., P.O. Box 313, Highway 412 East, Columbia, TN 38402 (615)388-7872
- Tennessee Egg and Poultry Ass'n, P.O. Box 11082, Knoxville, TN 37939-1082 (615)974-7351
- Tennessee Cattlemen's Ass'n, 510 W. College St. #135, Murfreesboro, TN 37130-3540 (615)896-2333



- Tennessee Pork Producers Ass'n, 2740 Old Elm Hill Pike, Ste. 202, Nashville, TN 37214 (615)871-0610
- Tennessee Dept. of Health and the Environment, Bureau of Environment, 150 Ninth Ave. North, Nashville, TN 37246-3001 (615)741-3657

**TEXAS** Tex. Agric. Code §§251.001-005 (Vernon 1982)

In Hall v. Muckleroy, 411 S.W.2d 390 (Tex. Civ. App. 1967), Hall bought from Muckleroy, a property next to Muckleroy's auction barn. Hall then sued complaining about the noise and odor from the auction business. The court, following a balancing of equities analysis, rejected the nuisance claim and allowed the auction barn to continue. A cattle feedlot did not fare so well in Meat Producers, Inc. v. McFarland, 476 S.W.2d 406 (Tex. Civ. App. 1972). The court held the presence of the feedlot decreased the value of the adjoining property and was a permanent nuisance regardless of whether there were cattle in it. A turkey farm was found to be causing a nuisance in Lacy Feed Co. v. Parrish, 517 S.W.2d 845 (Tex. Civ. App. 1974), when odors, feathers, and manure from the turkey farm washed onto another's property.

Texas has enacted a right to farm law which provides that if the farm has lawfully existed for one year prior to the suit and has not been substantially expanded or altered during that time, it will not be held a nuisance. The Texas law includes a fee shifting provision if the operation is protected by the law. An exception applies if the operation violates any federal, state, or local statutes, or if it threatens the public health, safety, or welfare. The law applies even when a farm is annexed by a city, unless it is found to be a hazard to the public. There have been no cases reported interpreting the law. The law was the subject of a 1982 Texas Attorney General's opinion holding fee shifting did not apply in an action brought by the Department of Health or a local prosecuting attorney. [Op. Attorney General MW-544 (1982)]

Resources

- Texas Farm Bureau, 7420 Fish Pond Road, P.O. Box 2689, Waco, TX 76702-2689 (817)772-3030
- Texas Poultry Fed., P.O. Box 9589, Austin, TX 78766 (512)451-6816
- Texas and Southwestern Cattle Raisers Ass'n, 1301 W. 7th St., Ft. Worth, TX 76102-2604 (817)332-7084
- Texas Cattle Feeders Ass'n, 5501 W I-40 Highway, Amarillo, TX 79105-6617 (806)358-3681
- Associated Milk Producers, Arlington (817)461-2674
- Texas Pork Producers Ass'n, P.O. Box 10168, Austin, TX 78766 (512)453-0615
- Texas Water Comm'n, P.O. Box 13087, Capitol Station, Austin, TX 78711 (512)463-7741

**UTAH** Utah Code Ann. §§78-38-7 to 8 (1987)

Utah's agricultural nuisance law, enacted in 1981, protects agricultural operations which have existed for three years and were not a nuisance when began. The nuisance claim must have arisen because of changed conditions in or about the locality of the agricultural operation and can not be due to negligent or improper operation. If the agricultural operation increases or intensifies the condition



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asserted to be a nuisance it is not protected. The law does not limit a person's right to recover damages due to pollution or changed condition of a stream, nor are damages limited if due to overflow of land. Any ordinance now in effect or enacted in the future is null and void if it makes an agricultural operation a nuisance or provides for the abatement of the operation as a nuisance. As used in the statute "agricultural operation" means "any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products. Utah offers similar protections to manufacturing facilities.

In 1977, the Utah Supreme Court heard a case brought by a municipality against a landowner. In *Fillmore City v. Reeve*, 571 P.2d 1316 (Utah 1977), the city alleged a nuisance existed, but the landowner defended his right to raise livestock by arguing his farm was a prior established non-conforming use and thus allowed under the relevant zoning ordinance. The court noted "there was nothing abnormally filthy or offensive about the manner of keeping livestock." There have been no reported cases interpreting Utah's law.

#### Resources

- Utah Farm Bureau Fed., 5300 South 360 West, Suite 200, Salt Lake City, UT 84123 (801)261-3991
- Utah Cattlemen's Ass'n, 150 South 600 East #105, Salt Lake City, UT 84102-1961 (801)355-5748
- Dairy Council of Utah/Nevada, Salt Lake City (801)487-9976
- Utah Pork Producers Ass'n, Utah St. Univ., Animal Science, UMC 4815, Logan, UT 84322-4815 (801)750-2141
- Utah Dept. of Health, Div. of Environmental Health, 228 North 1460 West, P.O. Box 16690, Salt Lake City, UT 84116 (801)538-6121

#### **VERMONT** Vt. Stat. Ann. tit. 12 §§5751-5753 (1990)

Vermont's right to farm law, enacted in 1981, provides agricultural activities conducted on farmland with a rebuttable presumption of reasonableness and of not being a nuisance. The agricultural practices must have been established prior to surrounding non-agricultural practices and must be consistent with good agricultural practice. An agricultural activity conducted in conformity with federal, state, and local laws and regulations is assumed to be a good agricultural practice and not to be adversely affecting the public health and safety. A showing that a practice has a substantial adverse effect on the public health and safety rebuts the presumption and removes the protection. The growing, raising, and production of horticultural and sivicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay, and dairy products, are included in "agricultural activity." "Farmland" means land devoted primarily to commercial agricultural activities.

The 1990 case, *Coty v. Ramsey Associates, Inc.*, 573 A.2d 694 (Vt. 1990), discussed at p. 58, involved what the court described as a "spite farm." The court held the right to farm law did not apply. There have been no other reported cases on Vermont's law.



Resources

- Vermont Farm Bureau, Inc., Comstock Farm, RR 4, Box 2287, Montpelier, VT 05602-8927 (802)223-3636
- New England Dairy Council, Williston (802)863-5416
- Vermont Agency of Natural Resources, 103 South Main St., Waterbury, VT 05676 (802)244-6916

**VIRGINIA** Va. Code §§3.1-22.28 and .29.

Virginia adopted a Type A right to farm law in 1981, which follows the one year format. An agricultural operation does not become a nuisance due to changed conditions in the locality if it has existed for at least one year; however, this section is not controlling if negligent or improper methods are followed, or if the farming operation has changed significantly. These exceptions also apply to the provision that local ordinances making an agricultural operation a nuisance are null and void. A farming operation may still be liable for any damages it causes due to the pollution or change of condition of another landowner's streams or land. The Virginia courts have not interpreted the statute.

Resources

- Virginia Farm Bureau Fed., Inc., P.O. Box 27552, 200 W. Grace St., Richmond, VA 23261 (804)788-1234
- Virginia Poultry Fed., P.O. Box 552, Harrisonburg, VA 22801 (703)433-2451
- Virginia Cattlemen's Ass'n, P.O. Box 176, Daleville, VA 24083-0176 (703)992-1009
- Virginia Pork Industry Ass'n, 1006 Washington Building, 1100 Bank St., Richmond, VA 23219 (804)786-7092
- Virginia State Water Control Board, 2111 North Hamilton St., P.O. Box 11143, Richmond, VA 23230 (804)367-0056

**WASHINGTON** Wash. Rev. Code Ann. §§7.48-300, -310 (West 1991).

The Washington courts have considered agricultural nuisances on several occasions. In 1964, a chicken producer was found liable for nuisance even though modern techniques of waste disposal and management were being used. In Jones v. Rumford, 392 P.2d 808 (Wash. 1964), the producer was only fined \$500 and the operation was allowed to continue while changes were made. In 1970, a feedlot operation was sued in Tinsley v. Monson & Sons Cattle Co., 472 P.2d 546 (1970), the court gave the producer an opportunity to make corrective changes, but prohibited it from operating on the same scale. The court's action appears to have been a generous decision because the producer converted the property into an extensive feedlot after the neighboring residence was established. A third case briefly discussing agricultural nuisance involved raising hogs on 13 acres in a residential area, State v. Primeau, 422 P.2d 302 (Wash. 1966).

Washington enacted a right to farm law in 1979, which creates a presumption that agricultural activities established before neighboring nonagricultural activities and following good agricultural practices are reasonable and do not create a nuisance. Farming practices may not violate federal, state, or local laws and may not have a substantial adverse effect on the health or safety of



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the public. The law was interpreted in a 1988 case, Benton City v. Adrian, 748P.2d 679 (Wash. App. 1988), discussed at p. 57, in which the court held the law did not apply to damages caused by irrigation tailwater some distance from the farm. The case led to a subsequent amendment expanding the list of protected agricultural activities, to specifically protect off-site drainage.

### Resources

- Washington State Farm Bureau, 1011 10th Ave. S.E., Olympia, WA 98501 (206)357-9975
- Washington Fryer Comm'n, 2003 Maple Valley Highway, Renton, WA 98055 (206)226-6215
- Washington Cattlemen's Ass'n, P.O. Box 96, Ellensburg, WA 98926-0096 (509)925-9871
- Washington Cattle Feeders Ass'n, P.O. Box 2382, Pasco, WA 99302-2382 (509)547-5538
- Washington Pork Producers, Route 1, Box 173, Colfax, WA 99111 (509)397-2881
- Washington Dept. of Ecology, St. Martin's College Campus, Mail Stop PV-11, Olympia, WA 98504 (206)459-6000

### **WEST VIRGINIA** W. Va. Code §§19-19-1 to 5 (1991)

West Virginia's right to farm statute, adopted in 1982, and discussed at p. 34, is unique in that it does not use the word "nuisance" to protect agriculture. Instead, the law provides the conduct of agriculture on agricultural land is not to be deemed adverse to other uses on adjoining or neighboring land. The statute states, "No complaint or right of action shall be maintained in any court of this state against the owner or operator of agricultural lands adverse to the conduct of agriculture upon agricultural lands..." There are two exceptions to the protection: 1) if the adjoining or neighboring land's use and occupancy existed before the agricultural operation; or 2) if the complaint arises from actual physical damage to a person or property. "Agriculture" is defined to include the production of food, fiber, or woodland products but does not include the milling or processing of such products by other than the producer himself. "Agricultural land" is defined as a tract of land of not less than five acres used or usable for the production of food, fiber, or woodland products of an annual value of \$1,000 or more. A change in use or leaving agricultural land fallow for a time does not affect the classification of the land. The statute does not lessen the duty of the operator of agricultural land to other persons but applies only to the right to conduct the practice of agriculture on agricultural land. West Virginia's version of a right to farm law has not been interpreted in any cases.

### Resources

- West Virginia Farm Bureau, Inc., 1 Red Rock Road, Buckhannon, WV 26201 (304)472-2080
- West Virginia Poultry Ass'n, Box 612, Moorefield, WV 26836 (304)538-2725
- West Virginia Cattlemen's Ass'n, P.O. Box 668, Buckhannon, WV 26201-0668 (304)472-4020
- West Virginia Pork Producers, P.O. Box 3024, Martinsburg, WV 25401 (304)229-5179



– West Virginia Dept. of Natural Resources, State Capitol Complex, 1800 Washington St. East, Charlestown, WV 25305 (304)348-2754

**WISCONSIN** Wis. Stat. Ann. §823.08 (West 1990)

Wisconsin's right to farm law, enacted in 1982, operates as a limit on the remedies available to the court if an agricultural operation has been found to be a nuisance. The court may not force the agricultural operation to close unless it is a threat to public health or safety. The court may only award nominal damages if the plaintiff acquired an interest in property after the established date of operation of the agricultural operation. The statute includes a fee shifting provision which was considered in Timm v. Portage County Drainage Dist., 429 N.W.2d 512 (Wis. Ct. App. 1988), discussed at p. 50. In another case, State v. Jefferson County Bd. of Adjustment, 373 N.W.2d 450 (Wis. Ct. App. 1985), the Wisconsin Court of Appeals agreed with a Board of Adjustment's conclusion a 240,000 hen facility would create a health and safety hazard due to the traffic generated by a facility of that size.

Prior to enactment of the present law, Wisconsin courts heard two cases dealing with agricultural nuisances. In Abdella v. Smith, 149 N.W.2d 537 (1967), the courts affirmed the "coming to the nuisance doctrine" and refused to enjoin operation of a horse stable and riding academy when the complaining drive-in restaurant was built after they were established. In State v. Quality Egg Farm, Inc., 311 N.W.2d 650 (1981), the egg farm was considered to be a nuisance and subject to abatement. The farm had been established in a residential area against the recommendations of agricultural science experts. The court considered the number of people affected, the locality of the operation, the character of the injury, the reasonableness of the use of the property, the nature of the business, the nature of the surrounding neighborhood, and the proximity of other buildings, in deciding whether the farm was a nuisance.

Resources

- Wisconsin Farm Bureau Fed., P.O. Box 5550, 7010 Mineral Point Road, Madison, WI 53705-0550 (608)833-8070
- Wisconsin Poultry Improvement Ass'n, Dept. of Poultry Science, 1675 Observatory Drive, Madison, WI 53706 (608)262-9764
- Wisconsin Cattlemen's Ass'n, 802 W. Broadway #217, Madison, WI 53713 (608)233-0320
- Dairy Council of Wisconsin, Madison, (608)831-1050
- Wisconsin Pork Producers Ass'n, P.O. Box 327, Lancaster, WI 53813 (608)723-7551
- Wisconsin Dept. of Natural Resources, 101 South Webster St., P.O. Box 7921, Madison, WI 53707 (608)266-2121

**WYOMING** Wyo. Stat. §§11-39-101, -104, and 1991 Wyo. ALS 58

Wyoming's first right to farm law was contained in regulations applying to feedlot operations and applied only to feedlots. Proof of compliance with the rules of the department of environmental quality and an earlier established date of operation together provided an absolute defense in a nuisance suit. In 1991, the Wyoming legislature enacted a new right to farm law, which contains a



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definition of "farm and ranch" and provides two conditions which must be met. A farm or a ranch will not be found to be a nuisance if: 1) it conforms to generally accepted agricultural management practices (GAAMP's) and 2) it existed before a change in the adjacent land use and would not have been a nuisance before the change occurred. "Farm and ranch" is defined to mean the "land, buildings, livestock, and machinery used in the commercial production and sale of farm and ranch products." The law is brief but does provide an important nuisance protection which goes beyond merely protecting feedlots. The law has not been considered in a case.

### Resources

- Wyoming Farm Bureau Fed., P.O. Box 1348, 406 S. 21st St., Laramie, WY 82070 (307)745-4835
- Wyoming Stock Growers Ass'n, P.O. Box 206, Cheyenne, WY 82003-0206 (307)638-3942
- Wyoming Pork Producers Council, P.O. Box 887, Riverton, WY 82501 (307)856-3343
- Wyoming Dept. of Environmental Quality, 122 West 25th St., Cheyenne, WY 82002 (307)777-7937

### **Other Useful Addresses**

American Agricultural Law  
Association  
Univ. of Arkansas, Leflar Law Center  
Fayetteville, Arkansas 72701  
(501)575-7389

American Farm Bureau Federation  
225 Touhy Ave.  
Park Ridge, Illinois 60068  
(312)399-5700

American Farmland Trust  
1920 N St., N.W.  
Suite 400  
Washington, D.C. 20036  
(202)659-5170

American Sheep Industry  
Association  
6911 S. Yosemite St.  
Englewood, Colorado 80112  
(303)771-3500

International Dairy Foods  
Association  
888 16th St., N.W.  
Washington, D.C. 20006  
(202)296-4250

National Broiler Council  
1155 15th St., N.W.  
Suite 614  
Washington, D.C. 20005  
(202)296-2622

National Cattlemen's Association  
5420 S. Quebec St.  
P.O. Box 3469  
Englewood, Colorado 80155  
(303)694-0305

National Pork Producers Council  
P.O. Box 10383  
Des Moines, Iowa 50306  
(515)223-2600

