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State Right-to-Farm Provisions

Alexandra Lizano
Research Fellow, National Agricultural Law Center

Rusty Rumley
Senior Staff Attorney, National Agricultural Law Center

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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.

Change in Operation
Enumerated changes approach: 5 states

- 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.

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

- 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.

Change in Operation
"Substantial changes" ineligibility: 6 states

- 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
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.

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

- 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
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.

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

- *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.

Limitation on Protections
Following good agricultural practice: 26 states

- *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
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.

Attorney's Fees
15 states

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.

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

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Smithfield Foods and Right to Farm in North Carolina

Rusty W. Rumley
Senior Staff Attorney

A recent series of cases out of North Carolina on nuisance litigation against swine farms has generated a great deal of interest in Right to Farm statutes. All fifty states have a Right to Farm statute; however significant questions often arise on when they apply, what they do, and how they work. The purpose of this Issue Brief is to succinctly describe the situation in North Carolina and look at why the Right to Farm statute did not apply to those operations in this specific case.

The cases in North Carolina all involve nuisance litigation against a division of Smithfield Foods. A nuisance is a substantial interference with another's use and enjoyment of their property. In this specific case, the nuisance litigation was concerning odor from the swine operations that the defendant contracted with in order to raise the swine. In total, twenty-nine lawsuits, involving around 500 plaintiffs, were filed against Murphy-Brown, a division of Smithfield foods, alleging that the swine farms that they contracted with failed to minimize odors by using open lagoons to store manure until it could be applied to fields and that the odor from these lagoons constituted a nuisance under North Carolina law.

North Carolina, like every other state, has a Right to Farm statute. The purpose of a Right to Farm statute is to provide an affirmative defense for agricultural operations that are facing nuisance litigation so long as certain criteria are met. This defense is based off of an old common law defense called "coming to the nuisance." The "coming to the nuisance" defense could be used if the neighbor bringing the nuisance action moved next to a piece of land where the current use of the land constituted a nuisance. The judge in the case had complete discretion on whether to use "coming to the nuisance" as a defense or to find that the neighbor's use of their property constituted a nuisance. Right to Farm statutes codify this old common law defense and provide a series of factors to determine if a state Right to Farm statute will apply.

In the case of North Carolina, the triggering language for the Right to Farm Statute stated:

> "No agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality outside of the operation after the operation has been in operation for more than one year, when such operation was not a nuisance at the time the operation began." NC Gen Stat § 106-701 (2013).

In interpreting this provision the judge in North Carolina ruled that the Right to Farm statute did not apply under these circumstances because the neighbors, or their relatives, bringing the nuisance actions lived on their property before the swine farms were established. Because people had resided in the area before the swine farms were established the judge ruled that the nuisance actions were not filed as a result of changed conditions in the area and granted a motion for summary judgement against the Right to Farm defense.

Three of the twenty-nine lawsuits have been heard and all three cases awarded substantial damages to the neighbors. Also at play in North Carolina is a statute that caps punitive damages at three times the amount of the actual damages awarded. The first trial had ten plaintiffs and resulted in a total judgement in excess of $50 million; however the actual damages awarded were for $75,000 each so with the damage cap the total amount awarded was $3.25 million. The second trial ended with a jury verdict of $25.13 million, but was reduced to $630,000. The third trial ended with a verdict of $473.5 million which was reduced to $94 million by the statutory damages cap. Murphy-Brown has already given notice that it intends to appeal the cases. In the meantime, the other twenty-six cases are being scheduled for trial.

As a result of the litigation the North Carolina legislature has amended the state Right to Farm statute; however these changes will not affect the cases that have already been filed against Murphy-Brown. For nuisance litigation in North Carolina going forward the triggering language has been modified so that in order to successfully bring a nuisance action against a farming operation the plaintiff must be the legal possessor of the property at issue, they must be located within one half mile of the source of the alleged nuisance, and they must file the lawsuit within one year of the establishment of the farming operation or a fundamental change to the farming operation. The legislature also changed the way damages could be assessed for the nuisance lawsuits. Now the damages are capped by the reduction in the fair market value of the property for permanent nuisances and the diminution of fair rental value for temporary nuisances. Punitive damages are prohibited against farming operations unless there is a criminal conviction or civil enforcement action brought by a state or federal environmental enforcement agency within the past three years of when the alleged nuisance first began.

STATUTES:

Fifty State Compilation of Right to Farm Statutes

N.C. Gen. Stat. Ann. § 1D-25
N.C. Gen. Stat. §§ 106-700 to 106-702.

ADDITIONAL RESOURCES:

In re NC Swine Farm Nuisance Litigation, No. 5:15-CV-00013-BR, 2017 WL 5178038, at *6 (E.D.N.C. Nov. 8, 2017).