

Arkansas' Right-to-Farm Law: An Overview

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Introduction

Arkansas' agricultural operations have enjoyed a level of protection against nuisance claims ever since state legislators adopted a "right-to-farm" law in 1981. The law was designed to protect agricultural operations from the pressures of urbanization and to reduce nuisance actions brought against them by surrounding property owners.

Right-to-farm laws differ from state to state, but they generally provide a legal defense to nuisance claims or lawsuits from other property owners whose property use came into existence after the agricultural operation.

All 50 states have some type of right-to-farm law. Arkansas' law is a tool that can benefit agricultural operations that qualify for protection under the outlined conditions.

Defining Nuisance and Agricultural Operations

The stated purpose of Ark. Code Ann. § 2-4-101 is "to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance."

Arkansas' right-to-farm law does not define "nuisance," but one dictionary definition of the word is that a nuisance is a "person, thing or circumstance causing an inconvenience or annoyance."¹ Many legal dictionaries describe nuisances as conditions that interfere with a person's use or enjoyment of his or her property, such as noxious odors.

The right-to-farm law broadly defines "agricultural operation" as "an agricultural, silvicultural or aquacultural facility or pursuit conducted, in whole or in part, including:

- (A) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;
 - (B) The planting, cultivating, harvesting and processing of crops and timber; and
 - (C) The production of any plant or animal species in a controlled freshwater or saltwater environment; and
2. "Agriculture" includes agriculture, silviculture, and aquaculture.²

It can be reasonably assumed traditional agricultural operations, such as livestock and row crop operations, would fall under the protections of the right-to-farm law. However, it is unclear whether nontraditional agricultural operations, such as an agritourism operation involving a corn maze and hay rides, would be covered by the law.

The answer is unclear because the breadth of what constitutes an "agricultural operation" has never been explored by an Arkansas court.

When Is an Agricultural Operation Not a Nuisance?

Arkansas' right-to-farm law does not automatically apply to every agricultural operation. The law sets out several qualifying conditions.

This publication is intended to provide general information about legal issues and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary, and no attempt is made to discuss laws of states other than Arkansas. For advice about how these issues might apply to your individual situation, consult a licensed attorney.

An agricultural operation that is alleged to be a nuisance need only meet one of three conditions outlined in Ark. Code Ann. § 2-4-107 to qualify for statutory protection:

- The agricultural operation was established before the start of any nonagricultural use in the surrounding area and uses methods or practices commonly associated with agricultural production.
- The agricultural operation uses commonly or reasonably used agricultural practices. A change in ownership, size, technology or product would not prevent the use of this defense, nor would a temporary suspension of operations.
- The agricultural operation was in operation for one year before any change in conditions of the surrounding area that may make the agricultural operation seem to be a nuisance to others.

In interpreting the third provision, Arkansas' attorney general in 1986 wrote that the provision would prevent enforcement of new rules against facilities in operation for more than one year.³ Opinions of the attorney general are not legally binding, but they provide some authority on how to interpret a law.

In the event of a lawsuit, the law provides that a court may award various legal fees to the prevailing party in the nuisance action. This means the losing party may end up paying for the prevailing party's attorney fees or expert fees, among other legal costs.

Losing Statutory Protections

The right-to-farm law does not serve as a defense for violating federal or state law, such as for violations of the Clean Water Act.

Ark. Code Ann. § 2-4-106 says the right-to-farm law does not defeat the right of others to recover damages for any injuries or damages sustained on account of pollution or change in condition of waters of any stream. The provision also includes causing water to overflow onto nearby land.

Although these exclusions have not been tested in an Arkansas court, as a general rule, agricultural operations should always obey other laws and be considerate of their neighbors.

Local and County Ordinances

The right-to-farm law contains a provision that voids any local or county ordinance that attempts to make agricultural operations a nuisance.⁴

Arkansas' attorneys general have also issued opinions on the effect of this provision, finding that any ordinance that attempted to regulate existing agricultural operations would be invalidated.⁵

For example, a 1983 attorney general's opinion found that a city would have no jurisdiction to adopt ordinances regulating livestock auction barns for control of odor or noise, but the city would still retain the power to regulate according to the public health statutes.⁶

Footnotes

¹"Nuisance." *The Oxford American College Dictionary*. 2001.

²Ark. Code Ann. § 2-4-102.

³See Ark. Op. Att'y Gen. No. 86-199 (1986).

⁴See Ark. Code Ann. § 2-4-105.

⁵See Ark. Op. Att'y Gen. No. 87-120 (1987) and Ark. Op. Att'y Gen. No. 87-297 (1988).

⁶See Ark. Op. Att'y Gen. No. 83-194 (1983).

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