

States' Right-to-Farm Laws and Their Impact on Nuisance Litigation

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Right-to-Farm Laws Generally

Farming and ranching causes odors, dust, and other issues that could potentially be considered a nuisance. Right-to-Farm laws (RTF) provide an affirmative defense for agricultural operations against nuisance suits. Although these laws vary from state-to-state, to be covered, an ag operation must generally:

- Meet the state's definition of "agricultural operation";
- Be in operation for a statutorily set time period (generally 1-3 years); and
- Be in compliance with all applicable laws, regulations, and permits

Importantly, the RTF defense is available only for activities related to the ag operation and not other businesses the farm may be running. The defense is only available against claims of nuisance and, in some states, trespass.



Image by Edwin Remsberg

2018: The Year of Right-to-Farm

One of the most significant ag law stories in 2018 involved twenty-six nuisance lawsuits filed against Murphy-Brown hog farms by neighboring landowners in North Carolina.

In a critical 2017 pre-trial ruling, the judge ruled that the North Carolina RTF did not apply to any of these cases, leaving the farms without the ability to raise the RTF defense. This determination was based on the judge's interpretation of the North Carolina RTF language requiring "changed conditions in our about the locality outside the operation."

In 2018, four cases proceeded to trial. The initial three verdicts resulted in multi-million dollar awards for the plaintiffs, comprised of both compensatory and punitive damages. The fourth trial, presided over by a different judge, ended up in a verdict of \$102,000 for compensatory damages, and a ruling that plaintiffs failed to meet the necessary standard to allow a jury to consider punitive damages.

Murphy Brown will appeal the judge's ruling on the applicability of the RTF statute when an order allowing an interlocutory appeal is entered.



Image by Edwin Remsberg

How Would Other States Handle This Situation?

These North Carolina cases have made agricultural producers in other states question how their own states' RTF laws would have applied in a similar situation.

Example of Maryland

Maryland's RTF law would potentially offer more protections than North Carolina's. To move forward with the nuisance suit in Maryland, the neighbor must bring it before a county agricultural reconciliation board or state agriculture mediation program before heading to court. This local mediation of the dispute can potentially limit lawsuits similar to those in North Carolina.

If, however, a similar dispute in Maryland did make it to a courtroom, then Maryland has standards that would prevent high punitive damages. Clear and convince evidence of malice intent must be proved to claim punitive damages in Maryland. Normal agriculture operations do not fall under that description unless intentionally used as a way to annoy or damage neighboring property.



Image by Edwin Remsberg



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Example of Texas

The Texas RTF law requires that an agricultural operation be lawfully in operation for one year, with the conditions complained about substantially unchanged, before the RTF defense is available. The established date of operation is the commencement of operations, but if physical facilities are subsequently expanded or other substantial changes are made, the established date of operation starts over for the changes.

Thus, in Texas, assuming the farms had been in operation for over one year, and there had been no substantial changes or expansions, the RTF would likely apply.

Were the defense inapplicable, a Texas plaintiff would have to prove fraud, malice, or gross negligence by clear and convincing evidence to recover punitive damages. Further, punitive damages are available only if the jury was unanimous on finding liability for and the amount of such punitive damages. Finally, punitive damages may not exceed the greater of two times the economic damages; an amount equal to non-economic jury award not to exceed \$750,000, or \$200,000.