

Overview of the Texas Right to Farm Law

As Texas' population continues to increase and more and more people are moving into rural areas, it is important for all producers to be aware of the protections of the Right to Farm statute, and to understand how it might apply if they face a lawsuit.

When was the law enacted? The Texas Right to Farm statute, found in the Texas Agricultural Code at Section 251.001 to 251.006, was enacted by the Texas Legislature in 1981.

What is the purpose of the law? The purpose of the Texas Right to Farm statute is to "conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." Specifically, the statute limits the circumstances in which an agricultural operation may be considered to be a nuisance.

What type of operation is covered by the law? The law applies to all "agricultural operations." Agricultural operations include: cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture; silviculture; wildlife management; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for participation in government programs or as part of crop or livestock rotation. Texas courts have also found that grain storage facilities are properly considered agricultural operations under the statute.

How does the law work? The Texas Right to Farm statute provides that no nuisance claim may be brought against an agricultural operation that has been in operation for one year or more prior to the date of the lawsuit, so long as the conditions complained of have not changed since the established date of operation. The established date of operation is the date when the agricultural operation commenced. If the physical facilities of an operation are later expanded, the expansion is considered separate and will have a new established date of operation, although the original established date of operation will not change. Thus, if a corn farm began in 2000, and later expanded to add new cattle feedlot in 2005, the established date for the corn farming would be 2000 and the established date for the cattle feedlot would be 2005.

Additionally, the construction and maintenance of an improvement (such as a barn, pens, fences, or feed/crop storage) on agricultural land does not constitute a nuisance so long as it was not prohibited by statute or government requirement when it was built.

What does a producer need to prove to rely on the Right to Farm law? In order to fall within the provisions of the statute, a producer needs to prove the following: (1) that the operation is considered an "agricultural operation" under the statute; (2) that the operation was lawfully operating for at least one year prior to suit; and (3) that the conditions complained of existed substantially unchanged since the established date of operation.

What claims are barred? The statute as written applies to bar nuisance claims. A nuisance claim involves allegations that a person's use and enjoyment of his or her own property has been damaged by another. Common nuisance claims against agriculture involve claims related to

odors, dust, or loud noises. In addition, Texas courts have applied the Right to Farm statute to claims of trespass against agricultural operations as well. Trespass claims arise when one person alleges that another entered, or caused something to enter, his or her property. Common trespass claims involve blowing dust or alfalfa onto the property of another, or manure run-off from one property to another.

Are there any exceptions to the law? Yes. The Right to Farm statute does not protect an agricultural operation conducted in violation of state, federal or local statute or law. Additionally, the statute does not prevent the state from acting to protect public health, safety and welfare. Further, if a new improvement obstructs the flow of water, light or air to other land, the protections of the statute do not apply.

Can a farmer recover his or her attorney fees? If a producer is protected by the Right to Farm statute and the lawsuit is dismissed, the plaintiff who filed suit is liable to the producer "for all costs and expenses incurred in the defense of the action" including attorney fees, court costs, travel and other related expenses.

Is there an example of this law being applied? One fairly recent example is *Ehler v. LVDVD*, which was decided in 2010 by the Texas Court of Appeals. There, Mr. Ehler filed suit against a neighboring dairy alleging that when it rained manure was washed from the dairy onto Mr. Ehler's property. Mr. Ehler claimed that this constituted both nuisance and trespass. The court found that the dairy had been in operation for at least one year prior to the lawsuit, that its manure storage practices had not changed, and dismissed both the nuisance and trespass claims under the Texas Right to Farm Act.