

## **New Mexico Amends Right to Farm Act**

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The New Mexico Legislature recently passed an amendment to the state's Right to Farm Act, which was signed into law by Governor Martinez on March 3, 2016. Senate Bill 72 adds a new paragraph to the Right to Farm Act, which has been in place in New Mexico since 1981.

### **Right to Farm Acts Generally**

Assume a dairy has been in operation for 10 years, and the city has continually moved further and further out towards the dairy. Now, where there used to be open fields, the dairy finds itself surrounded by housing developments. The new neighbors, who do not appreciate the smell of dairy cattle and the manure that comes with them, file suit for nuisance and seek an injunction to shut down the dairy operation. It was this type of scenario that led to the passage of Right to Farm Acts. All 50 states have a Right to Farm Act on the books. Although each statute differs in the details, the general purpose is to protect agricultural operations from nuisance lawsuits brought by neighboring landowners. The most common complaints against ag operations are odor, but there have also been claims made related to dust, manure run off, blowing hay leaves, noise, light, and slow moving traffic.

### **New Mexico's Right to Farm Act**

The New Mexico Right to Farm Act was initially passed in 1981 and is codified as NMSA 1978, Sections 47-9-1 to -7. The purpose of the law is "to conserve, protect, encourage, develop, and improve agricultural land for the production of agricultural products and to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance."

The Act protects "Agricultural Operations" which includes the plowing, tilling, or preparation of the soil; planting, growing, fertilizing, or harvesting crops; application of pesticides, herbicides, or other chemicals; breeding, hatching, raising, producing, feeding, keeping, slaughtering mules, cattle, sheep, goats, rabbits fowl raised for food, or similar farm animals for commercial purposes; production and keeping of honeybees, bee products, and processing facilities; production, processing, or packaging of eggs or egg products; manufacturing of livestock or poultry feed; crop rotation; commercial agriculture; and roadside markets. This definition is quite broad as it includes not only growing, but the processing and packaging of many products as well.

If a lawsuit is found to be frivolous, the court may award reasonable attorney's fees to the farmer. This is a more limited attorney fee provision as compared to some statutes in other states, which provide that any successful defendant shall recover reasonable attorney fees.

Importantly, the protections of the Act are not limitless. For example, the Act does not protect a farm from facing suit if the farm is operated negligently, improperly or illegally. Further, the Act does not prevent a person from seeking damages sustained due to the pollution of, or change in the condition of, waters of a stream or because of overflow on his or her land.

The most important provision in the Act is found in NMSA 1978, Section 47-9-3, titled "Agricultural Operations deemed not a nuisance."

Section (a) of this provision reads that any agricultural operation is not, and shall not become, a nuisance by any changed condition in or about the locality of the operation if the operation was not a nuisance at the time the operation began and has been in existence for at least a year. What this means essentially is that once an ag operation has been in existence for a year, a neighboring landowner may not bring suit for nuisance complaining about the operation.

Section (c) provides that the established date of operation is the date on which an agricultural operation commenced or an ag facility was constructed. If the operation or facility is subsequently expanded or a new technology is adopted, the established date of operation does not change. So, for example, assume a 100 cow dairy began in New Mexico in 1999. In 2009, the dairy changed to a new style of milking parlor and expanded to 1,000 cows. These changes--the implementation of new technology and the expansion in operation--do not change the established date of operation. This is important because that means the 1 year period during which nuisance suits can be filed is not reset with these changes.

### **The 2016 Amendment**

The recent amendment to the statute adds an additional paragraph to Section 47-9-3. The new paragraph provides:

*"No cause of action based upon nuisance may be brought by a person whose claim arose following the purchase, lease, rental, or occupancy of property proximate to a previously established agricultural operation or agricultural facility, except when such previously*

*established agricultural operation or agricultural facility has substantially changed in the nature and scope of its operations."*

This language makes clear that a neighbor who purchases, rents, or occupies land near an established ag operation may not bring suit for nuisance unless the operation has "substantially changed" both the "nature" and "scope" of its operations. Going back to our example, a dairy updating its milking parlor and increasing cow numbers would likely not be changing both "nature" and "scope." If a farm changed from a row crop operation to a 5,000 head hog operation, that might constitute a change in both nature and scope. In the end, in all likelihood, it will be a court that will have to decide based upon the facts in each case, whether an operation has substantially changed in both nature and scope such that a nuisance claim may be permissible.

### **Conclusion**

Right to Farm legislation offers important protection to agricultural operations. Given urban sprawl and the fact that many farms, ranches, and ag facilities now find themselves with new neighbors who may not understand what actually goes into raising food and fiber, these statutes are critical to ensure our nation's food supply. Farmers and ranchers should be aware of the provisions of the Right to Farm Act in their own state and seek to comply with the requirements needed for the statutory protection to apply.