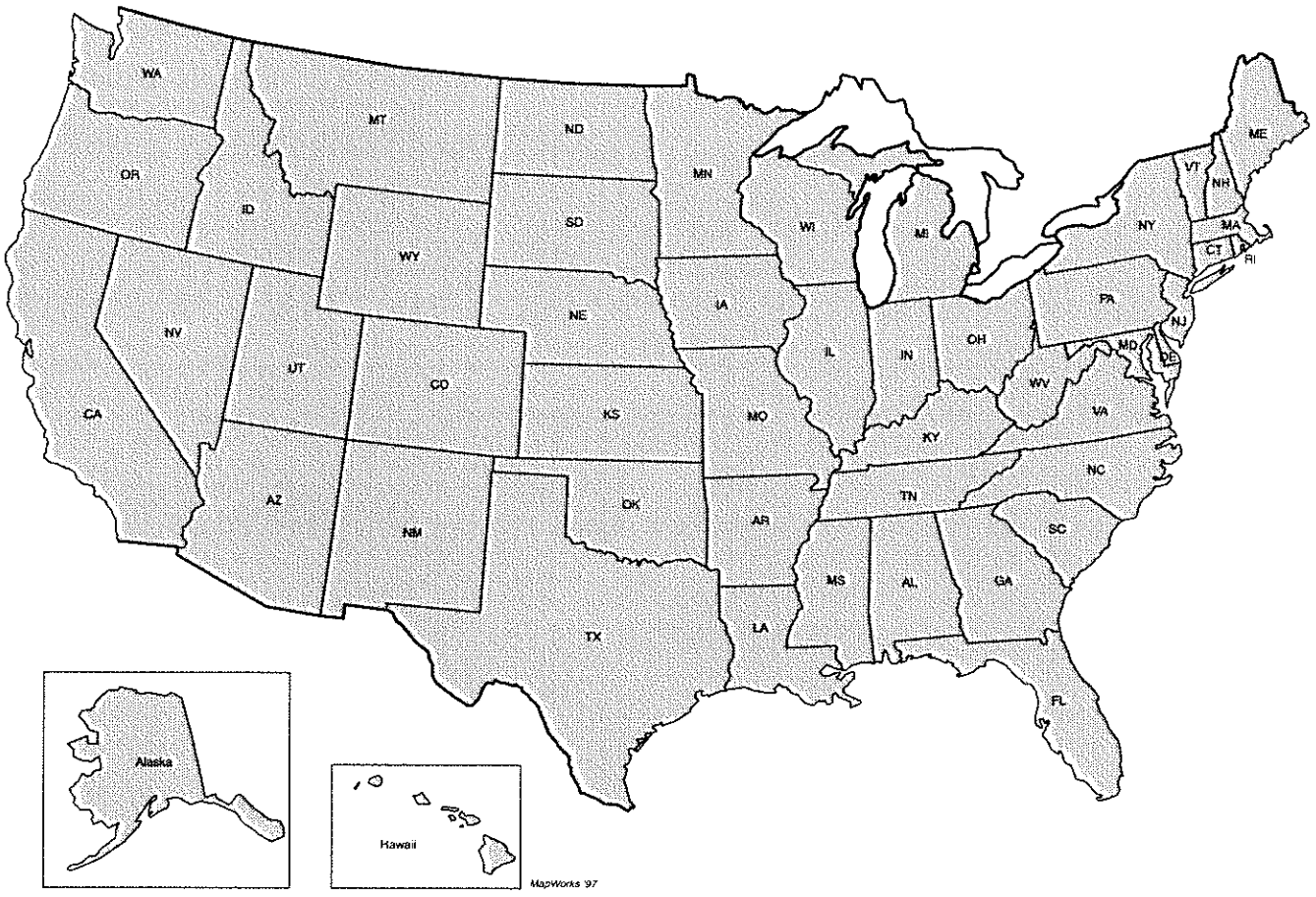
CHAPTER 6: RIGHT-TO-FARM LEGISLATION

MAP 6.1: STATES WITH RIGHT-TO-FARM LAWS, 1997



American Farmland Trust

BRIEF DESCRIPTION OF RIGHT-TO-FARM LAWS

Since 1963, every state in the nation has enacted a "right-to-farm" law. These statutes are designed to accomplish one or both of the following objectives: (1) to strengthen the legal position of farmers when neighbors sue them for private nuisance; and (2) to protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations. Most laws include a number of additional protections. Right-to-farm provisions may also be included in state zoning enabling laws, and farmers with land enrolled in an agricultural district may have stronger right-to-farm protection than other farmers. A growing number of counties and municipalities are passing their own right-to-farm legislation to supplement the protection provided by state law.

WHAT IS A NUISANCE?

The common law of nuisance forbids individuals from using their property in a way that causes harm to others. A private nuisance refers to an activity that interferes with an individual's reasonable use or enjoyment of his or her property. A public nuisance is an activity that threatens the public health, safety or welfare, or damages community resources, such as public roads, parks and water supplies.

A successful nuisance lawsuit results in an injunction, which stops the activity causing the nuisance, provides monetary compensation, or both. In a private nuisance lawsuit involving complaints against a farming operation, the court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally balance the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors:

- The degree of harm and its duration, permanence and character: Is it continuous or sporadic? Is it a threat to health, or simply a minor annoyance?
- The social value that state and local law places on both farming and the type of neighboring use that has been harmed;
- The suitability of the two sets of uses to the character of the locality; and
- The ease with which the neighbor could avoid the harm, and the farmer's ability to prevent or minimize the undesirable external effects of the farming operation[1].

One of the most important issues is whether the person bringing the lawsuit should have been able to anticipate the problem, and thus has assumed the risk of injury. If the farm was in operation before the person with the complaint moved to the neighborhood, the farmer may argue that the plaintiff "came to the nuisance." In most states, "coming to the nuisance" does not necessarily prevent farm neighbors from winning in court, but a farmer usually has a stronger legal case if his or her operation was there before the plaintiff moved to the area. Right-to-farm laws give farmers a legal defense against nuisance suits; the strength of that defense depends on the provisions of the law and the circumstances of the case.

FUNCTIONS AND PURPOSES OF RIGHT-TO-FARM LAWS

Right-to-farm laws are intended to discourage neighbors from suing farmers. They help established farmers who use good management practices prevail in private nuisance lawsuits. They document the importance of farming to the state or locality and put non-farm rural residents on notice that generally accepted agricultural practices are reasonable activities to expect in farming areas. Some of these laws also limit the ability of newcomers to change the local rules that govern farming. Local right-to-farm laws often serve an additional purpose: They provide farm families with a psychological sense of security that farming is a valued and accepted activity in their communities.

BRIEF HISTORY OF RIGHT-TO-FARM LAWS

TRENDS IN RIGHT-TO-FARM LAWS

Between 1963, when Kansas enacted a law to protect feedlots from litigation, and 1994, when Utah included right-to-farm protections in its agricultural district law, every state in the Union enacted some form of right-to-farm law[2]. Several states have enacted two types of right-to-farm legislation, and Minnesota and Iowa have enacted three. Table 6.1, p. 171 lists state right-to-farm laws and their dates of enactment.

TABLE 6.1: RIGHT-TO-FARM LAWS BY TYPE OF NUISANCE PROTECTION

State	Nuisance protection based on:	Date
Alabama	Changes in locality	1979
Alaska	Changes in locality	1986
Arizona	GAAMPs, defined as compliance with federal, state and local laws	1981
Arkansas	Changes in locality	1981
California	Changes in locality, GAAMPs also required	1981
Colorado	Changes in locality	1981
Connecticut	GAAMPs	1981
Delaware 1	Changes in locality, compliance with laws also required	1980
Delaware 2	GAAMPs, for farms in agricultural districts	1991
Florida	GAAMPs	1979
Georgia	Changes in locality	1980
Hawaii	Changes in locality	1982
Idaho	Changes in locality	1981
Illinois 1	Protection from local regulations for farms in agricultural districts	1979
Illinois 2	Changes in locality	1981
Indiana	Changes in locality	1981
Iowa 1	GAAMPs, for feedlots	1976
Iowa 2	Compliance with federal and state laws, for farms in agricultural districts	1982
Iowa 3	Compliance with federal and state laws, for animal feeding operations	1995
Kansas 1	GAAMPs	1963
Kansas 2	GAAMPs, defined as compliance with federal, state and local laws	1982
Kentucky	Changes in locality	1980
Louisiana	GAAMPs, compliance with federal, state and local laws required	1978
Maine 1	GAAMPs or change in locality	1981
Maine 2	Other: Farm registration	1989
Maryland	Compliance with federal, state and local laws	1981
Massachusetts 1	GAAMPs	1979
Massachusetts 2	GAAMPs	1989
Michigan	GAAMPs	1981
Minnesota 1	Protection from local regulations for farms in agricultural districts	1980
Minnesota 2	Protection from local regulations for farms in agricultural districts	1984
Minnesota 3	GAAMPs and compliance with state and local laws	1983
Mississippi	No change in condition alleged to create a nuisance	1980
Missouri	Changes in locality, expansions must comply with all laws	1982
Montana 1	Changes in locality	1981
Montana 2	Changes in locality	1989

Table 6.1 continues on next page

State	Nuisance protection based on:	Date
Nebraska 1	GAAMPs and compliance with laws, for livestock operations	1971
Nebraska	Changes in locality	1982
Nevada	GAAMPs, defined as compliance with federal, state and local laws	1985
New Hampshire	Changes in locality	1985
New Jersey 1	GAAMPs and federal and state laws	1983
New Jersey 2	GAAMPs and compliance with federal and state laws, for farms in agricultural districts	1983
New Mexico	Changes in locality	1981
New York 1	Protection from local regulations for farms in agricultural districts	1971
New York 2	Changes in locality	1981
North Carolina	Changes in locality	1979
North Dakota	Changes in locality	1981
Ohio 1	GAAMPs	1982
Ohio 2	GAAMPs or compliance with federal, state and local laws	1982
Oklahoma 1	GAAMPs, for feedlots	1969
Oklahoma 2	GAAMPs, defined as compliance with federal, state and local laws	1980
Oregon 1	Other: bird scarer	1979
Oregon 2	GAAMPs and compliance with all relevant laws	1981
Pennsylvania 1	Protection from local regulations, for farms in agricultural districts	1981
Pennsylvania 2	GAAMPs and compliance with laws	1982
Rhode Island	GAAMPs and compliance with federal and state pesticide laws	1982
South Carolina	Changes in locality	1980
South Dakota	Changes in locality, expansions must comply with federal, state and local laws	1987
Tennessee 1	GAAMPs, for feedlots	1979
Tennessee 2	GAAMPs	1982
Texas	Compliance with federal, state and local laws	1982
Utah 1	Changes in locality	1981
Utah 2	GAAMPs or compliance with federal, state and local laws, for farms in agricultural districts	1994
Vermont	GAAMPs, defined as compliance with federal, state and local laws	1981
Virginia 1	Protection from local regulations for farms in agricultural districts	1977
Virginia 2	GAAMPs and compliance with state laws	1981
Washington	GAAMPs, defined as compliance with all applicable laws	1979
West Virginia	Other	1982
Wisconsin	Other	1982
Wyoming 1	GAAMPs, for feedlots	1977
Wyoming 2	GAAMPs and changes in adjacent uses	1991

WHY WERE RIGHT-TO-FARM LAWS ENACTED?

State right-to-farm laws were enacted for a number of reasons. Changes in livestock and poultry production have resulted in higher concentrations of animals on smaller parcels of land. These concentrated animal feeding operations (CAFOs) release odors, attract flies and occasionally result in water pollution. Crop farming also has changed; farmers use more inputs and heavy machinery than ever before. At the same time, more non-farm families have moved into farming areas. While newcomers are initially attracted to the rural landscape, they often find that the realities of commercial agriculture are very different from its bucolic image.

Responding to complaints about farm practices such as confinement feeding, manure spreading, aerial spraying and the use of heavy machinery can be a serious problem for farmers. It takes them away from tasks that are critical to their operations and adds to the cost of doing business. In some cases, farmers are pressured to adopt practices that are less convenient and more expensive. In others, they may have to defend their activities against private nuisance lawsuits in court. Farm families also may feel that they are unwelcome in their communities or decide that farming is simply not viable in an increasingly suburban environment.

Increased public concern about the environment has resulted in a tide of new federal regulations. The Clean Air Act (1970), the Clean Water Act (1972), the Federal Insecticide, Fungicide, and Rodenticide Act (reauthorized in 1972) and the Resource Conservation and Recovery Act (1976), as amended by the Superfund law (1980), and the 1985, 1990 and 1996 Farm Bills have imposed new restrictions on farming practices. During the 1990s, state governments passed additional laws to protect water resources from pollution. Complying with new laws is expensive and time-consuming for farmers. Local anti-farming ordinances can be the last straw for farmers who are already overburdened with federal and state regulations. These new regulations, combined with changes in rural demographics, created a climate for the enactment of state right-to-farm laws.

Recently, local communities have begun to enact their own right-to-farm ordinances to supplement the protection that farmers receive from state law. The California Farm Bureau drafted a model right-to-farm ordinance and distributed it to all local chapters. As of 1992, at least 28 counties and 10 cities in California had enacted a version of the law[3].

ACCOMPLISHMENTS AND CHALLENGES

It is difficult to evaluate the accomplishments of right-to-farm laws because we do not have information on the results of local private nuisance suits against farmers; most states do not publish trial court decisions. A comprehensive review of state appellate court decisions conducted in 1991 found fewer than two dozen cases involving right-to-farm laws. The study identified only three cases in which right-to-farm laws protected farmers from a nuisance suit or local regulation; the remainder were decided in favor of the plaintiffs[4]. Since 1992, appellate courts in Michigan and Louisiana have each decided a case involving their state right-to-farm laws in favor of farmers[5]. Several court decisions involving right-to-farm laws are discussed in the analysis below. Still, most right-to-farm laws have never been interpreted by the courts. In the absence of published court decisions, we are forced to rely on analysis of the probable effects of right-to-farm laws.

ISSUES TO ADDRESS IN RIGHT-TO-FARM LAWS

ISSUES AND OPTIONS

State and local governments that are developing or revising a right-to-farm law must consider the following issues:

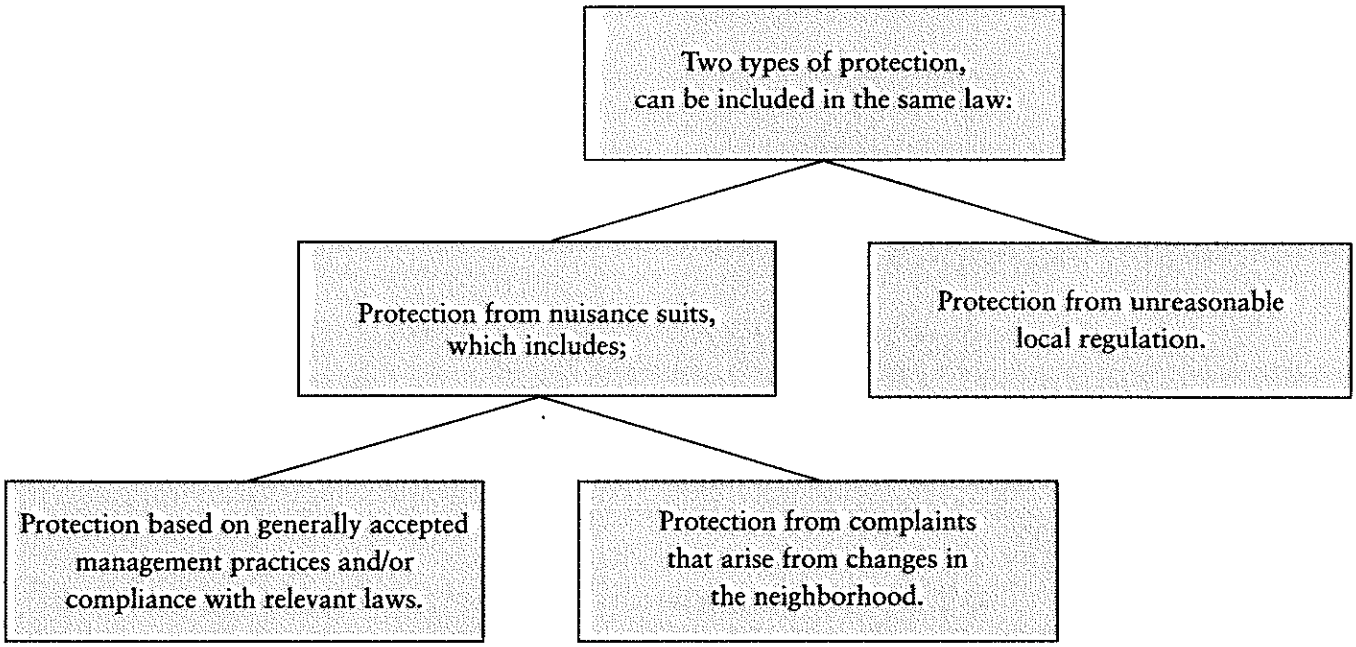
- What type of protection should the law provide, and on what should the protection be based?
- What type of farming operations should be protected?
- When should operations be entitled to protection?
- Where should farms be located to be entitled to protection?
- Which agricultural practices should be protected?

DESCRIPTIVE ANALYSIS OF RIGHT-TO-FARM LAWS

What type of protection: Categories of right-to-farm laws

There are 61 state right-to-farm laws; nine states include additional right-to-farm provisions in their agricultural district legislation. While each law is slightly different, they have many common elements. Right-to-farm laws provide two different types of protection. Every state gives farmers some measure of protection from nuisance suits. Second, some right-to-farm laws also prevent county and municipal governments from enacting regulations that would restrict farming practices (see Figure 6.1).

FIGURE 6.1: TYPES OF RIGHT-TO-FARM PROTECTION



Furthermore, almost all state right-to-farm laws can be divided into two categories based on the type of nuisance protection they provide. Twenty-five laws protect farmers from nuisance complaints that are the result of changes in the neighborhood. These laws are intended to write the "coming to the nuisance" defense into law[6]: If the farmers are there first, they should not be forced to shut down their operations or pay damages because new residents do not like living next to a farm. This type of law is based on an Alabama statute[7], as modified and adopted by North Carolina in 1979[8]. North Carolina's law states that "[n]o agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year...".

The other type of protection is based on the theory that if farmers act responsibly, they should not be held liable for creating a nuisance. Most right-to-farm statutes using this approach protect farmers from lawsuits if they use generally accepted agricultural and management practices. Some of these laws require farmers to comply with federal, state and local regulations applicable to farming. Some define GAAMPs as those practices that are in compliance with the laws and others list accepted practices or refer to a state agency definition of GAAMPs[9]. Six GAAMP laws require a waiting period of one or two years before farms are protected; 10 of these laws protect farms as long as the operation was established before the person filing the complaint moved to the neighborhood. Nineteen laws are silent on this issue.

Figure 6.1 illustrates the different types of right-to-farm protection. Table 6.1 classifies all of the state right-to-farm laws. Some of the older laws apply exclusively to feedlots. There are two right-to-farm laws that do not fit easily into the categories. West Virginia's statute states that "no complaint or right of action shall be maintained in any court...against the owner or operator of agricultural lands adverse to the conduct of agriculture upon agricultural land...," provided that the farm was there first, and that there is no physical damage to the neighbors or their property[10]. The language of this law is significant, because it also applies to trespass suits. Wisconsin's law prevents courts from forcing farms in exclusive agricultural use zones to close, unless they threaten public health or safety. The law also limits the damages courts may award in nuisance suits[11].

Provisions of laws

Table 6.2, p. 176 summarizes the provisions of state right-to-farm laws.

TABLE 6.2: PROVISIONS OF STATE RIGHT-TO-FARM LAWS

State	Applies to	Private nuisance protection	Public nuisance protection	Protection from unreasonable local regulation	Years before protected
Alabama	Agricultural operations and establishments	▲	▲	▲	1
Alaska	Agricultural production and forestry	▲		▲	3
Arizona	Commercial agricultural production	▲	▲		0+
Arkansas	Agricultural production, processing, storage, distribution	▲	▲	▲	1
California	Agricultural production and processing	▲	▲	▲	3
Colorado	Agricultural operations	▲	▲	▲	1
Connecticut	Agricultural operations	▲	▲		1
Delaware 1		▲	▲		1
Delaware 2	Farms in agricultural districts	▲	▲	▲	
Florida	Agricultural production, practices, marketing	▲	▲		1
Georgia	Commercial agricultural production, practices, processing, marketing	▲	▲		1
Hawaii	Agricultural zones	▲	▲		1
Idaho	Agricultural production and processing	▲	▲		1
Illinois 1	Farms in agricultural districts	▲	▲	▲	
Illinois 2	Agricultural production	▲	▲		1
Indiana	Agricultural and industrial operations	▲	▲	▲	1
Iowa 1	Feedlots	▲	▲		
Iowa 2	Farms in agricultural districts	▲	▲		0
Iowa 3	Feedlots	▲	▲		0
Kansas 1	Feedlots	▲	▲		0+
Kansas 2	Commercial agricultural production	▲	▲		0+
Kentucky	Agricultural and timber production	▲	▲	▲	1
Louisiana	Agricultural production, processing, marketing, support services	▲	▲	▲	0+
Maine 1	Commercial agricultural production on farms	▲	▲		0+
Maine 2		▲	▲		
Maryland	Agricultural production	▲	▲		1
Massachusetts 1	Agricultural operations	▲	▲		1
Massachusetts 2	Agricultural and farming operations	▲	▲		1
Michigan	Commercial agricultural production	▲	▲		0+
Minnesota 1	Farms in metropolitan agricultural districts	▲	▲	▲	
Minnesota 2	Farms in state agricultural districts	▲	▲	▲	
Minnesota 3	Family farms except feedlots	▲	▲		2
Mississippi	Commercial agricultural and timber production, processing	▲	▲		1
Missouri	Commercial agricultural production and processing	▲	▲		1
Montana 1	Agricultural and farming operations	▲	▲		0+
Montana 2	Agricultural and farming operations	▲	▲		0+
Nebraska 1	Livestock operations	▲	▲		0+
Nebraska 2	Commercial farms > 10 acres	▲	▲		0+

Law protects expansions	Not protected if nuisance at inception	Not protected for negligent operation	Water pollution not protected	Not protected if endangers health & safety	Farms in municipalities not protected	Farmer can get legal costs for frivolous suits
	▲	▲	▲			
	▲	▲				
				▲		
no	▲					
▲						
no	▲	▲				
no		▲	▲			
		▲				
						▲
with limits	▲					
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with limits	▲	▲	▲			
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	▲	▲	▲	▲		
with limits			▲			
	▲	▲	▲			▲
	▲		▲			
no						

State	Applies to	Private nuisance protection	Public nuisance protection	Protection from unreasonable local regulation	Years before protected
Nevada	Agricultural activities on farmland	▲	▲		0+
New Hampshire	Agricultural operations	▲	▲		1
New Jersey 1	Commercial agricultural operations	▲	▲		
New Jersey 2	Farms in agricultural districts	▲	▲		
New Mexico	Commercial agricultural production, processing, practices, new technology	▲	▲	▲	1
New York 1	Farms in agricultural districts			▲	
New York 2	Agricultural activities on farms	▲			0+
North Carolina	Commercial agricultural and forestry operations	▲	▲	▲	1
North Dakota	Commercial agricultural production and practices	▲	▲	▲	1
Ohio 1	Agriculture			▲	
Ohio 2	Farms in agricultural districts	▲			0+
Oklahoma 1	Feedlots				
Oklahoma 2	Agricultural production on farmland	▲	▲		0+
Oregon 1					
Oregon 2	Commercial agricultural and forestry production and practices	▲	▲	▲	
Pennsylvania 1	Farms in agricultural districts			▲	
Pennsylvania 2	Farms > 10 acres or >$10,000	▲	▲	▲	1
Rhode Island	Commercial agricultural and forestry production	▲	▲	▲	
South Carolina	Commercial agricultural production	▲	▲	▲	1
South Dakota	Commercial agricultural production	▲	▲		1
Tennessee 1	Livestock operations	▲	▲		0+
Tennessee 2	Commercial farms	▲	▲		0+
Texas	Agricultural operations	▲	▲		0+
Utah 1	Commercial agricultural production	▲	▲	▲	3
Utah 2	Farms in agricultural districts	▲	▲	▲	0+
Vermont	Agricultural production and silviculture	▲	▲		0+
Virginia 1	Farms in agricultural districts			▲	
Virginia 2	Agricultural production and silviculture	▲	▲	▲	
Washington	Commercial agricultural production	▲	▲		0+
West Virginia	Agricultural, timber production, practices, storage, shipping, and marketing				0+
Wisconsin	Agricultural use and practice				0+
Wyoming 1	Feedlots	▲	▲	▲ with limits	1
Wyoming 2	Commercial farms/ranches	▲	▲		0+

Source: State laws, and Hamilton, 1992a, pp. 166-167

Law protects expansions	Not protected if nuisance at inception	Not protected for negligent operation	Water pollution not protected	Not protected if endangers health & safety	Farms in municipalities not protected	Farmer can get legal costs for frivolous suits
				▲		
	▲	▲	▲			
				▲		
with limits	▲	▲	▲			▲
no						
no	▲	▲	▲		▲	
	▲	▲	▲		▲	
				▲	▲	
				▲		
		▲		▲		
				▲		
▲		▲	▲		▲	
with limits	▲	▲	▲		▲	▲
	▲					
				▲		
no	▲	▲	▲	▲		
				▲		
		▲	▲			
				▲		
						▲
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Which farming operations are protected?

The criteria that determine which agricultural operations are entitled to protection vary considerably from state to state. Vermont's legislation defines agricultural activities very generally, including, but not limited to "the growing, raising and production of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay and dairy products[12]." At least 18 states specify that right-to-farm laws protect commercial agricultural operations. Nebraska's law applies to commercial farms that include at least 10 acres, and Minnesota's general right-to-farm law offers nuisance protection to agricultural operations that are part of a family farm[13]. Arkansas, Georgia, Idaho, Louisiana, Mississippi and Missouri include the processing of agricultural products in their definition of protected activities, and California has a separate clause of its right-to-farm law that protects agricultural processing operations.

Several court cases have addressed the issue of which types of operations are protected. In two separate decisions, Mississippi's courts ruled that a cotton gin and a paper mill that processed wood from trees grown by the paper company fell within the definition of agricultural operations under the state right-to-farm act[14]. A court in North Dakota, however, held that the legislature did not intend to give right-to-farm protection to the food processing and marketing operations of a large national sugar refining corporation[15]. In a widely publicized case, the Vermont Supreme Court ruled that a livestock farm created for the express purpose of injuring neighbors did not fall within the definition of an agricultural operation entitled to protection under the right-to-farm law.*

When is a farm entitled to protection?

Most state right-to-farm laws protect farmers against nuisance lawsuits if their farms were in operation before the person filing the complaint moved to the neighborhood. In 25 states, the farm operation must be in existence for a year before it gains protection; farmers in Alaska, California and Utah must wait three years before their state right-to-farm laws protect them. Most state laws do not protect farm operations that were nuisances when they first began. Agricultural law professor Neil Hamilton explains that this provision creates a potentially large loophole in right-to-farm laws:

> The problem is that for an activity to be declared a nuisance someone must...be experiencing it at close range. Even when there has not been a change in the farm, nuisance-like situations may exist. For example, the manure may have always smelled, but when no one lived nearby, no nuisance claim was ever filed. If someone moves nearby, the farm could arguably become a nuisance. If a suit was filed, most right-to-farm laws would protect the farm; however, the court must still determine whether it was a nuisance when it began[16].

* *Coty v. Ramsey Association Incorporated*, 546 A.2d 196 (1988). According to Hamilton (1992a), the defendant in this case was a developer who was frustrated by neighborhood opposition to his plan for a motel. He got a permit to establish a farm on his property, dumped 16 truckloads of wet chicken manure across the road from the neighbors' homes, brought in 100 pigs and cows, a house trailer and 10 junk cars. The animals were poorly cared for, and those that died were left to decompose. No animals were sold from the site. The Vermont Supreme Court rejected the defendant's argument that this was an agricultural operation that was protected by the state right-to-farm law, and affirmed an award of $180,000 in compensatory damages and $380,000 in punitive damages.

Iowa's agricultural district law offers right-to-farm protection to operations that are located in an agricultural district, regardless of whether the operation was there before the person filing a complaint. In 1996, however, an Iowa Appeals Court ruled that the law did not protect a farm that was a nuisance before the farmers enrolled their land in an agricultural district[17].

Another problem is the issue of changes in farming operations. If a farm expands, adopts new technology or changes its crops or livestock, is the operation still protected? In Florida, Georgia, Idaho and North Carolina, courts have found that right-to-farm laws do not protect agricultural operations that expand or change in intensity.

Florida's law protects farms that use generally accepted agricultural and management practices. Yet in *Pasco Company v. Tampa Farm Service Incorporated*, a Florida appeals court found that a poultry manure handling operation conformed to GAAMPs, but that a new manure handling technology might constitute a "more excessive operation" that would not be protected by the law[18].

In Georgia, a court decision held that a farm that changed from a cow pasture to an intensive poultry operation was not entitled to nuisance protection, because the right-to-farm law protected farms only against complaints that were due to changes in the neighborhood[19]. North Carolina and Idaho have similar laws. In a recent North Carolina case, the court found that the law did not apply to a farm that converted its turkey houses into a hog production facility. The legislature, the court decided, intended the right-to-farm law to protect farm operations from their inception, "but did not intend it to cover situations in which a party fundamentally changes the nature of the agricultural activity which had theretofore been covered under the statute[20]."

Some right-to-farm laws specifically deny protection to expanded operations or new technologies. Georgia, Missouri, New Mexico, South Carolina and South Dakota have amended their right-to-farm laws to protect farmers who expand their operations. Georgia's law now states:

> If the physical facilities of the agricultural operation are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural facility of a previously established date of operation[21].

Most right-to-farm laws, however, are silent on the issue of whether changes in farming operations are protected. In these states, it is up to the courts to decide whether the law applies to expanded operations.

Where are farms entitled to protection?

In 24 states, right-to-farm laws generally take precedence over local ordinances. This provision limits local governments' ability to regulate agriculture. In some states, however, farms located in cities receive less protection than farms in unincorporated areas.

Idaho and Ohio right-to-farm laws offer no protection to agricultural operations located in municipalities. Colorado, Louisiana, Missouri, North Carolina, North Dakota, South Carolina, South Dakota and Tennessee limit protection for farmers in cities. New Mexico and South Dakota laws exempt farmers in cities from regulation if their farms were in existence before the passage of the right-to-farm law; North Carolina and Louisiana laws exempt farmers from regulation if they locate in or are annexed to the city after the enactment of the right-to-farm law.

In Hawaii, only farms within the state-designated agricultural zone are protected from nuisance suits. Wisconsin's law allows courts to order farmers who are located outside exclusive agricultural zones to adopt different agricultural practices to settle complaints, but courts may not "substantially restrict or regulate" farming practices inside exclusive farm zones. Delaware, Illinois, Minnesota, New Jersey, New York, Pennsylvania, Utah and Virginia have separate right-to-farm laws that apply to operations located in voluntarily created agricultural districts. In Utah, the right-to-farm provision of the agricultural district law prevents local governments from changing zoning in agricultural districts without permission of the landowners.

Which agricultural practices are protected?

Michigan's 1981 right-to-farm law states that an operation using "generally accepted agricultural and management practices" shall not be found to be a private nuisance. The state agriculture commission is responsible for defining GAAMPs and for reviewing them on an annual basis. Seventeen other states have modeled right-to-farm laws on the Michigan statute. Some of these outline protected practices in their statutes. Connecticut's right-to-farm law provides protection to farms that have been in operation for at least a year and which use generally accepted agricultural practices. Inspection and approval of the farm by the commissioner of agriculture is considered evidence that the farm follows GAAMPs. The law states that an agricultural operation shall not be found to be a nuisance due to a list of specific conditions, "provided such activities conform to acceptable management practices for pollution control approved by the commissioner of environment protection[22]." Conditions include:

> (1) Odor from livestock, manure, fertilizer or feed;
>
> (2) Noise from livestock or farm equipment used in normal, generally acceptable farming procedures;
>
> (3) Dust created during plowing or cultivation operations;
>
> (4) Use of chemicals, provided such chemicals and the method of their application conform to practices approved by the commissioner of environmental protection or, where applicable, the commissioner of health services; or
>
> (5) Water pollution from livestock or crop production activities, except the pollution of public or private drinking water supplies[23].

Other laws based on the Michigan model, however, give courts little guidance on how to determine which practices are protected by law. Louisiana defines generally accepted agricultural practices as "practices conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in a

similar community or locale and under similar circumstances." The law goes on to state that "each person engaged in agricultural operations shall be presumed to be operating in accordance with generally accepted agricultural practices[24]." This language shifts the burden of proof onto plaintiffs in agricultural nuisance cases, requiring them to gather the evidence to demonstrate that a farm operation is not in compliance with generally accepted agricultural practices.

In 1993, the Michigan Supreme Court found that a hog farm that implemented recommended waste management practices was protected by the state right-to-farm law. The court noted that evidence indicated that the area surrounding the farm was predominantly agricultural and decided the private nuisance case in favor of the farmer[25].

Washington's right-to-farm law takes a different approach to defining generally acceptable farming practices. It considers agricultural activities that conform to all applicable federal, state and local laws to be good practices that will not constitute a private nuisance. Eighteen other states have enacted similar statutes. Arizona's law states:

> A. Agricultural operations conducted on farmland that are consistent with good agricultural practices and established prior to surrounding nonagricultural uses are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety.
>
> B. Agricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practice and not adversely affecting the public health and safety[26].

Iowa, Kansas, Oklahoma, Tennessee and Wyoming have right-to-farm laws specifically designed to protect feedlots. Kansas' law states:

> Owners and operators who are granted a feedlot license shall:
> (1) provide reasonable methods for the disposal of animal excrement; (2) provide chemical and scientific control procedure for prevention and eradication of pests; (3) provide adequate drainage, from feedlot premises, and such drainage shall be so constructed as to control pollution of streams and lakes; (4) provide adequate veterinarian services for detection, control and elimination of livestock diseases; (5) have available for use at all times mechanical means for scraping, cleaning and grading feedlot premises; (6) provide weather resistant aprons adjacent to all permanently affixed feed bunks, water tanks and feeding devices; and (7) conduct feedlot operations in conformity with established practices in the feedlot industry as approved by regulations made and promulgated by the commissioner and in accordance with the standards set forth in this act.
>
> Any feedlot operated in compliance with such standards, and in compliance with the regulations made and promulgated by the commissioner shall be deemed to be prima facie evidence that a nuisance does not exist[27].

The text of the California Farm Bureau's model local right-to-farm ordinance states that:

> No agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards and with all chapters of the _____ County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the _____ County Code, if it was not a nuisance when it began.

The model ordinance also provides for a disclosure statement to be signed when real estate in an agricultural area changes hands. The statement warns potential buyers that they should be prepared to experience "noise, odors, fumes, dust, smoke, insects, operation of machinery...storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides[28]." Finally, the ordinance gives parties to a right-to-farm dispute the option of submitting the conflict to a grievance committee for resolution. The full text of the California Farm Bureau's model ordinance is included in Appendix I, p. 187.

Which practices are not protected?

Florida's right-to-farm law lists specific practices that are not protected, such as the presence of dangerous waste materials and the keeping of diseased livestock. Other statutes list general exceptions. Twenty-five states deny right-to-farm protection to farmers who are found to be negligent, and 13 state laws make exceptions for farm practices that have a substantial effect on public health and safety.

Farm practices that result in water pollution are not protected in 24 states. In 1995, the Mississippi Supreme Court held that a paper company that grew trees and operated a paper mill was an agricultural operation for the purposes of the right-to-farm law, but that release of dioxin and other pollutants 100 miles downstream of the plant was not within the intended coverage of the statute[29].

Most right-to-farm laws leave room for courts to interpret exactly which practices are protected. In 1988, the Washington Court of Appeals ruled that the right-to-farm law did not protect runoff water and silt from an orchard onto private land and into an irrigation district's canal[30]. In response to the decision, amendments to the statute approved in 1992 specifically protected the use of water for irrigation[31].

OBSERVATIONS

The record of legislative activity on agricultural nuisance issues is remarkable, but right-to-farm laws often seem to promise more than they deliver. As Neil Hamilton observed, many of these statutes "are more accurately characterized as only limited defenses to nuisance suits[32]." This is particularly true of statutes modeled on North Carolina's right-to-farm law, which protects farmers only from lawsuits that arise because of changes in the surrounding neighborhood. Many of these statutes do not protect farmers who expand their operations or adopt a new technology. This type of statute makes it possible for a farmer who is in full compliance with all applicable federal, state and local laws to be found liable for creating a nuisance.

Statutes that require farmers to comply with local laws are also problematic. Unless the law limits local government's power to define what constitutes a nuisance, new residents may be able to change the local rules governing agriculture. This could create problems for farmers over time. Laws that protect farmers who comply with federal and state laws, and who follow generally accepted agricultural and management procedures probably offer farmers a more secure and predictable legal environment.

Despite their mixed record of success in the courts, right-to-farm laws appear to be very popular with farmers. One explanation for this popularity is that the laws may deter neighbors from going to court. Recently, states have been trying to increase this effect by adding "fee shifting" provisions to their right-to-farm laws. Nine states now allow a court to award legal fees to a farmer if it finds that a nuisance complaint is "frivolous." Right-to-farm provisions of agricultural district laws in Iowa and New Jersey require mediation of disputes between farmers and their neighbors before a lawsuit is filed.

Neil Hamilton suggests other steps that states can take to clarify and strengthen their right-to-farm laws, such as spelling out what practices are acceptable and creating an administrative process for resolving individual disputes[33].

New, local right-to-farm ordinances may ultimately prove more effective than state laws. John Gamper of the California Farm Bureau believes that the organization's model right-to-farm ordinance has served a number of useful purposes in addition to addressing nuisance complaints. The ordinance includes a "findings and policy" section, which is intended to serve as the legal basis for regulation. Local Farm Bureau chapters have used this section of the model ordinance to call public attention to the importance of agriculture in their communities[34].

According to Gamper, the grievance committees formed to resolve right-to-farm disputes have also served as informal agricultural advisory committees to local boards of supervisors. Real estate disclosure notices serve an educational function in some jurisdictions: Imperial County, Calif., mails out a copy of its agricultural nuisance deed notice to landowners every year with their property tax bills. While none of the local ordinances based on the California Farm Bureau model have been tested in court, they appear to be serving an important purpose by putting residents on notice that the local government supports agriculture, despite the inconveniences farming might cause[35].

While most farmers strongly support right-to-farm statutes, the laws are becoming controversial in Iowa and other Midwestern states, in the context of the public debate over factory-style hog production facilities. First, some family farmers and rural landowners have charged that the laws offer too much protection to large, corporate livestock feeding operations. Second, rural residents, including farmers, also feel that right-to-farm laws act as a taking of private property rights[36].

Edward Thompson, Jr., American Farmland Trust's senior vice president for policy, believes that right-to-farm laws cast a revealing light on the broader issue of private property rights. He notes that advocates of expanded property rights favor the elimination of government land use regulation. But what are right-to-farm laws, he asks, but the regulation of

non-farmers right to use their property without interference from neighboring farming activities? The point, writes Thompson, is that right-to-farm laws attempt to balance the rights of property owners who have different interests in the land. Calling for increased protection of property rights begs the question of whose rights are to be protected, from whom, and how the protection is to be achieved if not by government intervention. The existence of the right-to-farm laws illustrates that nuisance litigation—the protective device favored by the most extreme property rights advocates—is not sufficient. "Unless," suggests Thompson, "we are prepared to recognize that selling the back 40 for a subdivision is the real nuisance to the farmer next door[37]"

N. William Hines, Dean of the University of Iowa College of Law and former director of the university's Agricultural Law Center, sees Iowa's right-to-farm laws as a threat to rural "neighborliness." Good farmers, according to Hines, have always run their operations in a way that does not interfere with their neighbors' rights to enjoy their property. Nuisance law has traditionally served as a means to deal with farms that are not operated in good faith. Right-to-farm laws weaken or remove that remedy. This is a problem, Hines writes, "when nuisance conditions are created by large-scale corporate animal feeders, whose primary responsibilities are to shareholders expecting profit, and not to community values like respect for neighbors' welfare." In the long term, Hines argues, "it is ethically wrong...and politically unwise to privilege large-scale animal feeders to harm their rural neighbors and other farmers[38]."

This critique raises some troubling issues for policy makers. Do right-to-farm laws make it easier for very large, concentrated animal feeding operations to drive small family livestock farms out of business? If so, should the laws offer stronger protection to family farms? How can state and local governments protect lawfully operated farming operations from lawsuits filed by rural residents who have little understanding of or sympathy for the needs of commercial farming, and at the same time protect small farmers and other rural residents from agricultural "bad actors?"

The Iowa legislature recently modified the state's newest right-to-farm law to clarify that "chronic violators" of state laws and administrative orders are not entitled to the "rebuttable presumption" that their animal feeding operations are not a nuisance[39]. The relevance of the new provision is unclear, because the statute never applied to injuries caused by a farming operation's failure to comply with federal or state statutes or regulations. The legislature's action may be most significant as a reflection of the public sentiment surrounding agricultural nuisance issues. Right-to-farm laws are likely to become more controversial as more non-farmers move into rural areas and the size and intensity of commercial agricultural operations continues to increase.

In conclusion, while right-to-farm laws do not directly protect farmland from conversion to other uses, they are an important component of any program to support farming. In communities where residential and commercial land uses are encroaching on farmland, right-to-farm laws and ordinances give established farm families and those farmers who are operating in accordance with the law some security that their operations are safe from nuisance complaints filed by newcomers.

For more information on farmland protection, contact the Farmland Information Center at http://www.farmlandinfo.org or call (413) 586-4593.

APPENDIX I: CALIFORNIA FARM BUREAU MODEL
RIGHT-TO-FARM ORDINANCE

MODEL
RIGHT TO FARM ORDINANCE

APPENDIX

Section 1. Definitions.
As used in this Ordinance No. _____ :

(a) "Agricultural Land" shall mean all that real property within the boundaries of _____County currently used for agricultural operations or upon which agricultural operations may in the future be established.

(b) "Agricultural Operation" shall mean and include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur bearing animals, fish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

Section 2. Findings and Policy
Alternative 1
(a) It is the declared policy of this County to enhance and encourage agricultural operations within the County. It is the further intent of this County to provide to the residents of this County proper notification of the County's recognition and support through this ordinance of those persons' and/or entities' right to farm.
(b) Where non-agricultural land uses extend into agricultural areas or exist side by side, agricultural operations frequently become the subjects of nuisance complaints due to lack of information about such operations. As a result agricultural operations are forced to cease or curtail their operations. Such actions discourage investments in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the County's agricultural industry as a whole. It is the purpose and intent of this section to reduce the loss to the County of its agricultural resources by clarifying the circumstances under which agricultural operations may be considered a nuisance. This ordinance is not to be construed as in any way modifying or abridging state law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of State law relative to nuisances, rather it is only to be utilized in the interpretation and enforcement of the provisions of the code and county regulations.
(c) An additional purpose of this ordinance is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residence. Such concerns may include, but are not limited to, the noises, odors, dust, chemicals, smoke, and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

or

Alternative 2

(a) The Board of Supervisors of _____County finds that commercially viable agricultural land exists within the County, and that it is in the public interest to enhance and encourage agricultural operations within the County. The Board of Supervisors of _____County also finds that residential and commercial development adjacent to certain agricultural lands often leads to restrictions on agricultural operations to the detriment of the adjacent agricultural uses and the economic viability of the County's agricultural industry as a whole.

(b) The purposes of the chapter are to promote public health, safety and welfare and to support and encourage continued agricultural operations in the County. This ordinance is not to be construed as in any way modifying or abridging state law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of State law relative to nuisances, rather it is only to be utilized in the interpretation and enforcement of the provisions of this code and County regulations.

Section 3. Nuisance.

No agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards and with all chapters of _____County Code, as established and followed by similar agricultural operation, shall be or become a nuisance, public or private, pursuant to the _____County Code, if it was not a nuisance when it began.

Section 4. Disclosure.

(a) The disclosure statement required by this chapter shall be used under the following circumstances and in the following manners:

(1) The County of _____ shall mail a copy of the disclosure set out in subpart (b)I to all owners of real property in _____ County with the annual tax bill.

(2) Upon any transfer of real property by sale, exchange, installment land sale contract, lease with an option to purchase, or ground lease coupled with improvements, or residential stock cooperative improved with dwelling units, the transferor shall require that a statement containing the language set forth in subpart (b) shall be signed by the purchaser or lessee and recorded with the County Recorder in conjunction with the deed or lease conveying the interest in real property.

[Optional: provided, however that the real property to be transferred is adjacent to or within _____ feet of real property upon which agricultural operations are conducted.]

(3) Upon the issuance of a discretionary development permit, including but not limited to subdivision permits and use permits, for use on or adjacent to lands zoned for agricultural operation. The discretionary development permit shall include a condition that the owners of the property shall be required to sign a statement of acknowledgment containing the Disclosure set out in subpart (b)I on forms provided by the Planning Department, which form shall then be recorded with the County Recorder.

(b) The disclosure required by Section 4 (a) (2) is set forth herein, and shall be made a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

This disclosure statement concerns the real property situated in the County of _____, state of California, described as _____. This statement is a disclosure of the condition of the above described property in compliance with ordinance no._____ of the county code as of _____ , 1990. It is not a warranty of any kind by the seller(s) or any agent(s) representing any principal(s) in this transaction, and is not a substitute for any inspections or warranties the principal(s) may wish to obtain.

I.

Seller's Information

The seller discloses the following information with the knowledge that even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. The following are representations made by the seller(s) as required by the County of _____and are not the representation of the agent(s), if any. This information is a disclosure and is not intended to be part of any contract between the buyer and seller.

1. The County of _____ permits operation of properly conducted agricultural operations within the County. If the property you are purchasing is located near agricultural lands or operations or included within an area zoned for agricultural purposes, you may be subject to inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any agricultural operation which is in conformance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector. _____ County has established a grievance committee to assist in the resolution of any disputes which might arise between residents of this County regarding agricultural operations

2. (additional county requirements)

_____

_____

_____

Seller certifies that the information herein is true and correct to the best of seller's knowledge as of the date signed by the seller.

Seller _____ Date _____

Seller _____ Date _____

II.

Buyer(s) and seller(s) may wish to obtain professional advice and/or inspections of the property and to provide for appropriate provisions in a contract between buyer and seller(s) with respect to any advice/inspections/defects.

I/We acknowledge receipt of a copy of this statement.

Seller _____ Date _____ Buyer _____ Date _____
Seller _____ Date _____ Buyer _____ Date _____
Agent (Broker representing seller _____ By _____ Date _____
(Associate Licensee or Broker-Signature)
Agent (Broker obtaining the offer _____ By _____ Date _____
(Associate Licensee or Broker-Signature)
State of _____)On this the _____ day of_____ ,
_____) SS. before me, the undersigned Notary Public, personally appeared
County of)

_____
_____

_____personally known to me. _____ provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) _____ subscribed to the within instrument and acknowledge that _____ executed the same for the purposes therein contained.
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Notary Public

Present A. P. No. _____
A Real Estate Broker is qualified to advise on real estate. If you desire legal advice, consult your attorney.

Section 5. Refusal to Sign Disclosure Statement
If a Buyer refuses to sign the disclosure statement set forth in Section 4(b) the transferor may comply with the requirements of this chapter by delivering the statement to the Buyer as provided in Section 4(b) and affixing and signing the following declaration to the statement:

I, (Name), have delivered a copy of the foregoing disclosure statement as required by law to (Buyers name) who has refused to sign.

I declare the foregoing to be true under penalty of perjury.

Date: _____ (Sign) _____

Print Name:

Section 6. Penalty for Violation

Noncompliance with any provision of this chapter shall not affect title to real property, nor prevent the recording of any document. Any person who violates any provision of this chapter is guilty of an infraction punishable by a fine not exceeding one hundred dollars ($100.00).

Section 7. Separability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court or competent jurisdiction, it shall not affect the remaining portions of the ordinance.

Section 8. Precedence

This ordinance shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolution in conflict herewith and to the extent they do conflict with this ordinance they are hereby repealed with respect to the conflict and no more.

Section 9. Resolution of Disputes

(a) Should any controversy arise regarding any inconveniences or discomforts occasioned by agricultural operations, including, but not limited to, noises, odors, fumes, dust, the operation of machinery of any kind during any 24 hour period (including aircraft), the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides, the parties may submit the controversy to a grievance committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.

(b) Any controversy between the parties may be submitted to a grievance committee whose decision shall be advisory only, within thirty (30) days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.

(c) The committee shall be composed of three (3) members selected from the community including representatives from _____ (examples: County Agriculture Commissioner, President of local real estate association, other county officials).

(d) The effectiveness of the grievance committee as a forum for resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.

(e) The controversy shall be presented to the committee by written request of one of the parties within the time limits specified. Thereafter, the committee may investigate the facts of the controversy, but must, within thirty (30) days, hold a meeting to consider the merit of the matter and within twenty (20) days of the meeting must render a written decision to the parties. At the time of the meeting both parties shall have an opportunity to present what each considers to be pertinent facts.

ENDNOTES

1. American Law Institute, *Restatement of Torts (Second)* (St. Paul, Minn., 1982), Sections 827-828.

2. For an excellent summary of state right-to-farm laws and an analysis of the issues they present, see Neil Hamilton, *A Livestock Producer's Legal Guide to Nuisance, Land Use Control, and Environmental Law* (Des Moines, Iowa: Drake University Agricultural Law Center, 1992a).

3. Neil Hamilton, "Right-to-Farm Laws Revisited: Judicial Consideration of Agricultural Nuisance Protections," *Journal of Agricultural Taxation and Law*, 14 (3), (1992b), p. 28.

4. *Ibid.*, pp. 195-227.

5. *Steffens v. Keeler*, 200 Mich. App. 179, 503 N.W. 2d 675 (1993), *Bowen v. Flaherty*, 601 So. 2d 866 (1992).

6. Hamilton, 1992a, p. 25.

7. 1915 Alabama Acts 691 (codified as amended at Ala. Code S. 6-5-127, supp. 1982).

8. N.C. Gen. Stat. SS 106-700 to 701 (Supp. 1990).

9. Hamilton, 1992a, p. 25.

10. WVC 19-19-1 to 5.

11. WSA 823.08.

12. VSA tit. 12 S 5751.

13. NRS S 2-4401 to 4404; MSA s. 561.19.

14. *Bowen v. Flaherty*, 601 So. 2d 866 (1992); *Leaf River Forest Products v. Ferguson*, 662 2d 648 (1995).

15. *Knoff v. American Crystal Sugar Corporation*, 308 N.W. 2d 313 (1986).

16. Hamilton, 1992a, pp. 32-33.

17. *Weinhold v. Wolff*, 555 N.W.2d 454 (Iowa, 1996).

18. 573 So. 2d 909 (1990).

19. *Herrin v. Opatut*, 281 S.E. 2d 575 (1981).

20. *Durham v. Britt*, 117 N.C. App. 250, 451 S.E. 2d 1 (1994).

21. GSA S72-108.

22. CGSA S. 19a-341.

23. *Ibid.*

24. LRSA S. 3-3601.

25. *Steffens v. Keeler*, 200 Mich. App. 179, 503 N.W. 2d 675 (1993).

26. Ariz. Rev. Stat. Ann. secs. 3-111 to 3-112 (1995).

27. KRS S.47-1505.

28. The disclosure statement was first recommended in Edward Thompson, Jr. "Defining and Protecting the Right to Farm, Parts I and II," *Zoning and Planning Law Report*, 5 (8), (1982), pp. 57-70.

29. *Leaf River Forest Products v. Ferguson*, 662 So. 2d 648 (1995).

30. *Benton City v. Adrian*, 748 P2d 679, Wash. App. (1988).

31. Hamilton, 1992a, p. 58.

32. Neil D. Hamilton and Greg Andrews, "Employing the 'Sound Agricultural Practices' Approach to Providing Right-to-Farm Protection to Agriculture." White Paper 93-2 (Des Moines, Iowa: Drake University Law School, 1993), p. 7.

33. *Ibid.*, pp. 36-38.

34. John Gamper, telephone communication with Robin Sherman, 1996.

35. *Ibid.*

36. Neil Hamilton, letter to Robin Sherman, March 4, 1997.

37. Edward Thompson, Jr., "Right-to-Farm Laws Revisited," Unpublished article (Washington, D.C.: American Farmland Trust, 1992).

38. N. William Hines. "Iowa: No. 1 in Neighborliness or Hogs?" *Des Moines Register*, February 29, 1997, 2C.

39. Iowa Senate File 2375, 1996, amending ICR 657.11.

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