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This presentation is part of an educational modular program designed to provide new and beginning farmers and ranchers with relevant information to initiate, improve and run their agricultural operations

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Arkansas's Right-to-Farm Law





Disclaimer

This presentation is intended to provide general information about right-to-farm laws 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 an attorney.



Objective

- To understand nuisance
- To understand the defenses/defense provided by Arkansas' right-to-farm (RTF) statute
- The affect of the RTF on local and county ordinances





Overview

- All 50 states have some form of a right-to-farm (RTF) law
- **RTF law** - An affirmative defense, or a defense that the producer must show they meet the requirements of in order to use
- Protect agricultural operations from pressures of urbanization
- RTF law is designed to protect existing agricultural operations from nuisance suits brought by neighbors

How RTF laws works

RTF laws generally provide nuisance protections in two different ways

1. Codification of the common law “coming to the nuisance defense”

This means if the agricultural operation was established when the complaining neighbors moved into the area, the neighbors were aware of the operation, choose to live in the area of the operation, and now can't seek to enjoin the operation



How RTF laws works

2. Statutory time period when a nuisance suit must be brought, or any nuisance claim is lost

- For example, if the law requires nuisance suits to be brought within 1-year of the agricultural operation beginning, then neighbors have only 1-year to bring a nuisance suit



Nuisance

Nuisance is “defined as conduct by one landowner that unreasonably interferes with the use and enjoyment of the lands of another and includes conduct on property that disturbs the peaceful, quiet, and undisturbed use and enjoyment of nearby property.”

Aviation Cadet Museum, Inc. v. Hammer, 373 Ark. 202, 207 (2008)

- Two kinds of nuisance:
 - **Private nuisance** – the nuisance affects only the property rights of an individual
 - **Public nuisance** – the nuisance affects rights held in common by the public



Arkansas' RTF Law Overview

Defense only applies to "agricultural operations"

- **3 elements to RTF law:**
 1. Attorneys fee provision
 2. Exclusions to RTF law
 3. Limitations on local and county zoning ordinances



Purpose of the Arkansas RTF

“It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest lands and other facilities for the production of food, fiber, and other agricultural and silvicultural products. . . It is the purpose of this chapter 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.”

Ark. Code § 2-4-101



“Agricultural Operation”

An “agricultural operation” is defined 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[.]”

Ark. Code § 2-4-102



“Agricultural Operation”

Statutory definition appears to be broad, but its true limits have never been tested in an Arkansas court

- For example, traditional agricultural operations such as row crop operations, cattle operations, poultry operations, goat operations, and others, should be included in the definition
- Also, newer non-traditional operations may be covered by but Arkansas court would have final decision. For example, according to the Michigan’s RTF law, pheasant hunting preserves qualify as an agricultural operation, in Texas, raising fighting chickens does not qualify
- Any legal court in Arkansas can decide on these operations that are not specifically mentioned in the law



3 Elements of RTF Defense

1. Using practices commonly associated with agriculture
2. Coming to the nuisance
3. One-year limitations period to bring a nuisance claim



3 elements of RTF defense

1. Practices Commonly Associated with Agriculture

- “except as provided in this section, an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.”

Ark. Code § 1-4-107(b)(1)

- However, the types of practices are not defined by statute or court
- If you are using common practices then by rebuttable presumption your operation cannot be considered a nuisance

Rebuttable presumption is a term used in the law that says that an assumption made by a court is true, unless someone comes forward to contest it and prove otherwise



3 elements of RTF defense

1. Practices commonly associated with agriculture

- Because the statute does not defines specific types of agricultural practices, it allows for judicial determination based on the facts of each case
- Therefore a good rule of thumb to avoid these problems is to:
 - **Abstain from poor agricultural practices that could constitute a nuisance** (This has been used in other states' with similar provision in their RTF law)



3 elements of RTF defense

1. Practices commonly associated with agriculture

If using practices commonly associated with agriculture, the agricultural operation can not be found to be nuisance based on following 5 activities or conditions:

- A. Change in ownership or size;
- B. Nonpermanent cessation or interruption of farming;
- C. Participation in any government-sponsored agricultural program;
- D. Employment of new technology; or
- E. Change in the type of agricultural product produced

Ark. Code § 2-4-107(b)(1)(A)-(B)



3 elements of RTF defense

2. Coming to the Nuisance

Codification of the common law defense as it relates to agriculture

- Need to meet 2 elements to use this defense:
 1. Agricultural operation must be “established prior to the commencement of the use of the area surrounding the agricultural operation for nonagricultural activities”

Ark. Code Ann. § 2-4-107(c)(1)(A)



Means that the agricultural operation must be established before the arrival of the complaining neighbors

2. Agricultural operation must be using those practices commonly associated with agriculture

3 elements of RTF defense

3. One-year limitations period

The RTF provides:

An agricultural operation or its facilities or appurtenances shall not be or become a public or private nuisance as a result of any changed conditions in and about the locality after it has been ***in operation for a period of one (1) year or more*** when the agricultural operation or its facilities or appurtenances were not a nuisance at the time the agricultural operation began

Ark. Code § 2-4-107(a) (emphasis added)



Appurtenance is that term for what belongs to and goes with something else. For example, the backyard belongs to the house

3 elements of RTF defense

3. One-year limitations period

There are 2 possible views in interpreting this section:

1. **Texas view:**
2. **Minnesota view**

1. TEXAS VIEW

- Views provision as statute of repose, or statute designed to bar any suit after a specified time period
- Look to see if ag operation has existed for more than 1 year and end of inquiry by court
- View adopted by most states with this section in their RTF



3 elements of RTF defense

2. Minnesota view

- Look to see was the agricultural operation a nuisance when it began
- Could be hard to do if the operation has been in the family for many generations
- View the AR Attorney General appears to have adopted in some opinions, but his view not binding on an AR court





RTF defense

There are 2 ways to view how these 3 elements operate together:

1. One defense view:

- The RTF provides 1 defense and each of the 3 elements must be met in order to use the RTF law as a defense
- Very narrow view of the law

2. The 3 defense view:

- Each of the 3 elements described before is a defense and the producer can use any defense they qualify for
 - Broader view of the law
-
- It is up to the Arkansas court to decide the view to take, but best to consider trying to meet the more narrow view of the law

Attorneys fee provision

The RTF provides that:

- “The court may award expert fees, reasonable court costs, and reasonable attorney's fees to the prevailing party in any action brought to assert that an agricultural operation is a public or private nuisance”

Ark. Code § 2-4-107(d)

- If the producer wins using the RTF law, then could ask the court to award fees and other expenses
- This could help reduce substantial legal bills a producer could incur to successfully defend a nuisance suit



Exclusions to RTF

RTF has 2 exclusions:

1. The RTF will not provide a defense for:

- “any injuries or damages sustained by them on account of any pollution of or change in the condition of the waters of any stream or on account of any overflow of the lands of any person, firm, or corporation”

Ark. Code § 2-4-106

This means the RTF law will not provide a defense for damages caused from the pollution or change in the condition of a stream or causing water to overflow on a neighbor's land



Exclusions to RTF

2. RTF does not exempt producer from statutory obligations under other laws, such as the Clean Water Act or state laws:

- Being in compliance with any state or federal permits issued to an agricultural operation is a rebuttable presumption of the agricultural operation not being a nuisance

RTF only provides an affirmative defense to nuisance claims and not a general defense to all claims





Local and County Ordinances

The RTF limits the effects of local and county ordinances on agricultural operations

- The RTF provides that:
 - Any and all ordinances adopted by any municipality or county in which an agricultural operation is located making or having the effect of making the agricultural operation or any agricultural facility or its appurtenances a nuisance or providing for an abatement of the agricultural operation or the agricultural facility or its appurtenances as a nuisance in the circumstances set forth in this chapter are void and shall have no force or effect

Ark. Code § 2-4-105

Right to farm



Local and County Ordinances

- Looking at AR attorney general opinions. The Attorney General has found:
 - City could not regulate livestock auction barns. Ark. Op. Att’y Gen. No. 83-194 (1983)
 - Limit city’s power to regulate established swine and poultry operations in city limits. Ark. Op. Att’y Gen. No. 87-120 (1987) & Op. Att’y Gen. No. 87-297 (1988)

This provision will seriously limit how cities and counties can regulate existing agricultural operations



Summary

- RTF laws provide only a defense to nuisance claims brought against an agricultural operation
- In order to qualify for the RTF, must be an “agricultural operation”
- RTF law either provides 1 defense or 3 defenses, an Arkansas court will have to decide this issue
- RTF does not provide defense in certain cases involving water or violations of state and federal laws
- RTF will void local and county ordinances that attempt to regulate existing ag operations as nuisances





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This presentation was prepared by:

University of Arkansas, Fayetteville

Dan Donoghue

Ixchel Reyes Herrera

H.L. Goodwin Jr.

L. Paul Goeringer

Sandy Martini



**USDA-ARS-Poultry Production and Product Safety Research
Unit**

Annie Donoghue



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