

Does the State's "Right-to-Farm" have a Good Faith Standard?

Note: Most of the right to farm statutes have a good faith standard when it comes to bringing an action against an agricultural operation. Many of these laws also make an exception to the bar of liability for real/actual damages suffered by a plaintiff. Also, discussed in an Indiana case, most right to farm statutes require compliance with the law, and some laws require good faith management of the agricultural operation. *Lindsey v. DeGroot*, 898 N.E.2d 1251 (Ind. Ct. App. 2009). 8 A.L.R.6th 465 (Originally published in 2005)

Has Good Faith/Negligence Standard

Alabama: Yes, the protections "shall not apply whenever a nuisance results from the negligent or improper operation of any . . . farming operation facility." Ala. Code § 6-5-127(a)

Colorado: Yes, protections do not apply if the farm is operating negligently, but using methods/practices "commonly or reasonably association with agricultural production" creates a rebuttable presumption of non-negligence. CO ST § 35-3.5-102(2)(a)(III), (b)

Connecticut: Yes, shall not apply when "negligence or wilful or reckless misconduct in the operation of any such agricultural or farming operation, place, establishment or facility, or any of its appurtenances." CT ST § 19a-341(c).

Idaho: Yes, protections "shall not apply when a nuisance results from the improper or negligent operation of an agricultural operation, agricultural facility or expansion thereof." ID ST §22-4505(2).

Illinois: Yes, protections "shall not apply whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances." 740 Ill. Comp. Stat. Ann. 70/3.

Iowa: Yes, protections will not apply "if the nuisance results from the negligent operation of the farm or farm operation," and under the CAFO laws. IA ST § 352.11(b); IA ST § 657.11(c). Both laws have been ruled unconstitutional in certain cases, per Westlaw flag system.

Missouri: Yes, protections "shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances. MO ST § 537.295(1).

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Maryland: Yes, does not protect operations run in a "negligent manner." MD CTS & JUD PRO §5-403(b)(1), (c).

Massachusetts: Yes, protections "shall not apply if the nuisance is determined to exist as the result of negligent conduct or actions inconsistent with generally accepted agricultural practices." MA ST 243, § 6

New Mexico: Yes, protections "shall not apply whenever an agricultural operation or agricultural facility is operated negligently or illegally such that the operation or facility is a nuisance. NM ST. § 47-9-3 (A).

Rhode Island: Yes, protections "do not apply to agricultural operations conducted in a malicious or negligent manner, or to agricultural operations conducted in violation of federal or state law controlling the use of pesticides, rodenticides, insecticides, herbicides, or fungicides. 2 RI ST § 2-23-6.

Middle Ground

Louisiana: Kind of, it prevents negligence cases from claiming protection, and allows local governments to adopt regulations to not protect negligently operated agricultural operations. LA R.S. 3:3606-07.

New Hampshire: Kind of, protections "shall not apply if a nuisance results from the negligent or improper operation of an agricultural operation. Agricultural operations shall not be found to be negligent or improper when they conform to federal, state and local laws, rules and regulations." NH ST § 432:34.

Does Not Have Good Faith/Negligence Standard

Arizona: No explicit good faith standard for agricultural operation. Compliance with laws presumed to be good agricultural practices. AZ ST § 3-112(B).

Arkansas: No good faith standard, but requires "Employment of methods or practices that are commonly or reasonably associated with agricultural production or are in compliance with any state or federally issued permit[s]." AR ST § 2-4-107(c)(2).

California: No good faith or negligence standard, but compliance with other laws required. CA CIVIL §3482.5(a)(2)

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Delaware: No, the negligent/improper action language was removed in an amendment in 2010. AGRICULTURE--AGRICULTURAL OPERATIONS--FARMS, 2010 Delaware Laws Ch. 376 (S.B. 265)

Florida: No explicit good faith standard for agricultural operation, just an adherence to "generally accepted agricultural and management practices." FL ST §823.14(4)(a). Seems to protect against negligence claims as well, see definition of "Nuisance." (3)(f)

Kansas: No, but presumption sticks if "in conformity with federal, state, and local laws and rules and regulations." KS ST 2-3202(b).

Maine: Only good faith requirement is to bring the case in good faith; does require the adoption of the best management practices as required by the Commissioner. Me St T. 7 § 158.

Michigan: No explicit good faith standard, but requires following "generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. MI ST § 286.473(1)

Minnesota: No explicit good faith standard, but requires both compliance with all applicable laws and operation "according to generally accepted agricultural practices." MN ST § 561.19 (2)

New Jersey: No explicit good faith standard, but does require compliance with applicable laws and regulations. NJ ST 4:1C-26(a).

New York: No good faith or negligence standard, but requires review by the Commissioner of Agriculture to see if practices "constitutes a sound agricultural practice." NY AGRI & MKTS §308(b).

North Carolina: No good faith or negligence standard, no requirement to be in compliance with laws. NC ST §106-701.

Oregon: No good faith or negligence standard, requires the compliance with laws. OR ST §30.930(2)(d).

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Pennsylvania: No, but does requires compliance with laws and does not bar from bringing claims for actual, sustained damages if farm is not complying with the law. PA ST 3 P.S. §954.

Tennessee: No good faith or negligence standard, but compliance with generally accepted agricultural practices and applicable statutes and rules required. TN ST § 43-26-103(2).

Texas: No good faith or negligence standard, requires compliance with laws. TX ST §251.004(a).

Vermont: No good faith or negligence standard, requires compliance with laws/regulations and good agricultural practices. 12 V.S.A. §5753(a).

Virginia: No good faith or negligence standard, rebuttable presumption applies if in "compliance with applicable best management practices, laws, or regulations such that any identified deficiency did not cause a nuisance that created a significant risk to human health or safety." VA ST § 3.2-302(A)

Washington: No good faith or negligence standard, but requires compliance with good agricultural practices, which is if they are complying with all applicable laws and rules. WA ST 7.48.305(2).

Wisconsin: No good faith or negligence standard, only requires agriculture to "not present a substantial threat to public health or safety." WI ST 823.08(3)(a)(2).