

The National Agricultural
Law Center



An Agricultural Law Research Project

States' Right-To-Farm Statutes

State of Louisiana

www.NationalAgLawCenter.org



States' Right-to-Farm Statutes

STATE OF LOUISIANA

La. Rev. Stat. Ann. §§ 3:3601 to 3:3624

Current through the 2009 Regular Session

§ 3:3601. Citation; legislative findings; purpose

A. This Part shall be known as and may be cited as the Louisiana Right to Farm Law.

B. (1) The legislature hereby finds and declares that agriculture is essential not only to the economy of the state but to the sustenance of life, yet acreage devoted to agriculture has steadily declined in this century.

(2) The legislature further finds and declares that owners of agricultural land and the public, which depends upon agricultural production, need to be protected from further diminution in value of agricultural land by providing safeguards and by establishing a more reliable remedy for diminution in value of agricultural land caused by governmental entities.

(3) The legislature also finds and declares that agricultural operations and the public, which depends upon agricultural production, need to be protected from any nuisance actions.

§ 3:3602. Definitions

As used in this Part, the following terms shall have the following meanings:

(1) "Agricultural activity" means a commercial enterprise of any agricultural related or associated entity.

(2) "Agricultural facility" means any facility used for the marketing, processing, or production of agricultural products, or for providing agricultural support services.

(3) "Agricultural land" means any land on which any agricultural operations is being conducted. Land which has qualified for a use value assessment under the provisions of R.S. 47:2301 et seq. shall be presumed to be agricultural land.

(4) "Agricultural marketing" means the marketing or handling of agricultural products.

(5) "Agricultural operation" means any agricultural facility or agricultural land which is being used for agricultural production or agricultural processing and includes any facility used for the production and processing of crops or products thereof, livestock or products thereof, farm-raised fish and fish products, wood, timber or forest products, fowl or plants for breeding or sales, and poultry or poultry products for commercial or industrial purposes. "Agricultural operation" also includes the use of farm machinery, equipment, devices, chemicals, products for agricultural use, materials and structures designed for agricultural use and used in accordance with traditional farm practices.

(6) "Agricultural processing" means the processing of any agricultural product and includes, but is not limited to, the slaughtering and processing of livestock and poultry, the elevation and drying of grain, the processing of sugar cane, and the ginning of cotton.

(7) "Agricultural product" means crops, livestock, poultry, and aquacultural,

floracultural, horticultural, silvicultural, or viticultural products.

(8) "Agricultural production" means the commercial production of any agricultural products and includes the planting of cover crops, the leaving of land idle for the purpose of participating in government programs, normal crop or livestock rotation procedures, and the use of agricultural support services.

(9) "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides, lime, or other soil amendments; irrigation operations; or custom plowing, soil preparation or leveling, cultivation, or harvesting.

(10) "Diminution in value" means an existent reduction of twenty percent or more of the fair market value or the economically viable use of, as determined by a qualified appraisal expert, the affected portion of any parcel of private agricultural property or the property rights thereto for agricultural purposes, as a consequence of any regulation, rule, policy, or guideline promulgated for or by any governmental entity.

(11) "Established date of operation" means the date on which the agricultural operation, including forestry activities, commenced operation. If the physical facilities of the agricultural operation, including forestry activities, are subsequently expanded, then the established date of operation for each expansion shall be deemed to be a separate and independent "established date of operation" as of the date of commencement of the expanded operation. The commencement of the expanded operation shall not divest the agricultural operation of the previously established date of operation.

(12) "Generally accepted agricultural practices" are 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.

(13) "Governmental action" means annexation of territory by a governmental entity and the issuance of a rule, regulation, policy, or guideline promulgated for or by any governmental entity, or an order or other legally binding directive having the force of law or capable of being enforced by government. Governmental action does not mean the following:

- (a) A formal exercise of the power of eminent domain.
- (b) The adoption, enactment, repeal, or amendment of a statute or resolution by the legislature.
- (c) A governmental action directed or mandated by an order of a court of competent jurisdiction.
- (d) Law enforcement activity involving the seizure or forfeiture of private agricultural property for a violation of law or as evidence in a criminal proceeding.
- (e) An order issued as a result of a violation of law.
- (f) Actions taken to enforce a mortgage or other valid security device.
- (g) Actions taken in compliance with federal law or regulation.
- (h) A result of police power to prohibit activities that are harmful to the public safety and health.

(14) "Governmental entity" means:

- (a) A board, authority, commission, department, office, or agency of the state government.
- (b) A local governmental subdivision with a population of less than four hundred twenty-five thousand.
- (c) A special purpose district.

(15) "Owner" means a person owning an interest in private agricultural property at the time a governmental action becomes effective as to the private agricultural property in which the owner owns an interest.

(16) "Person" means any individual, partnership, corporation, association or other legal entity.

(17) "Private agricultural property" means bona fide agricultural or horticultural land that is assessed as such for parish ad valorem taxes as agricultural lands under homestead exemption that is wholly owned by a private citizen or citizens, or a privately or publicly held corporation, partnership, limited partnership, nonprofit corporation, or other legal entity and that is located outside the corporate limits of any municipality.

(18) "Traditional farm practices" means those accepted and customary standards established by similar agricultural operations under similar circumstances using established best management practices. Best management practices for animal feeding operations and confined animal feeding operations shall be determined by the Louisiana Department of Agriculture and Forestry in conjunction with the LSU AgCenter.

§ 3:3603. Right to Farm

A. The legislature hereby declares that persons who are engaged in agricultural operations in accordance with generally accepted agricultural practices or traditional farm practices should be protected from legal actions brought by persons who subsequently acquire an interest in any land in the vicinity of the agricultural operation and from any nuisance action, public or private, against the agricultural production of an agricultural product or an agricultural operation including but not limited to, agricultural processing, and any agricultural activity involved, directly or indirectly, in the production of food for human consumption or for animal food.

B. No agricultural operation shall be deemed to be a nuisance in any action brought under the provisions of Civil Code Article 669, R.S. 33:361, R.S. 40:14, or any other grant of authority authorizing the suppression or regulation of public or private nuisances if the agricultural operation is conducted in accordance with generally accepted agricultural practices or traditional farm practices, and any one of the following applies:

(1) The person bringing the action acquired the interest in the land or improvements alleged to be affected by the nuisance after the date on which an agricultural operation was in existence.

(2) The agricultural operation was established prior to any change in the character of the property in the vicinity of the agricultural operation.

(3) The agricultural operation has existed for one year or more and the conditions or circumstances alleged to constitute a nuisance have existed substantially unchanged since the established date of operation.

C. When an agricultural operation has been established, the protection from nuisance actions provided by this Section shall include the protection of similar agricultural operations engaged in as a result of the normal rotation of crops, or livestock, or both.

§ 3:3604. Presumption

Each person engaged in agricultural operations shall be presumed to be operating in accordance with generally accepted agricultural practices or traditional farm practices.

§ 3:3605. Frivolous lawsuits

If the court determines that any action alleging that an agricultural operation is a nuisance is frivolous, the court may award costs of court, reasonable attorney fees, and any other related costs to the defendant.

§ 3:3606. Negligence, intentional injury

The provisions of this Chapter shall not apply to actions based on negligence, intentional injury, or violation of state or federal law or rules.

§ 3:3607. Local ordinances

A. No parish governing authority shall adopt any ordinance that declares any agricultural operation operated in accordance with generally accepted agricultural practices or traditional farm practices to be a nuisance or any zoning ordinance that forces the closure of any such agricultural operation.

B. Municipal zoning and nuisance ordinances shall not apply to agricultural operations that were established outside the corporate limits of the municipality and that were incorporated into the municipality by annexation.

C. The governing authorities of parishes and municipalities may adopt ordinances to prohibit or regulate agricultural operations that are negligently operated or that are not operated in accordance with generally accepted agricultural practices or traditional farm practices.

D. The provisions of Subsection A of this Section shall not apply to Jefferson Parish.

§ 3:3608. Minimization of impact of governmental action

To minimize the impact of governmental action affecting private agricultural property and private agricultural property rights, a governmental entity shall:

- (1) Avoid imposing an undue burden on the resources of that governmental entity by actions that require compensation of private agricultural property owners under the United States Constitution or the Constitution of Louisiana.
- (2) Avoid diminution in value of private agricultural property which is used in agricultural production or which may potentially be used in agricultural production.
- (3) Expedite a decision by the entity in cases in which a delay of the decision will substantially interfere with the use or value of private agricultural property rights affected by the provisions of this Part.
- (4) Avoid unnecessary delays in compensating owners of private agricultural property when diminution in value occurs by governmental action.

§ 3:3609. Impact assessment

A. A governmental entity shall prepare a written assessment of any proposed governmental action prior to taking any proposed action that will likely result in a diminution in value of private agricultural property.

- B. The written assessment shall include written analyses and conclusions concerning:
- (1) A clear and specific identification of the governmental action and the purpose of the governmental action.
 - (2) Whether the governmental action would constitute a physical invasion or occupation of private agricultural property.
 - (3) The length of time that the governmental action would interfere with the use of private agricultural property.
 - (4) Whether the governmental action would result in a diminution in value as to the affected private agricultural property and, if so, the extent thereof.
 - (5) The extent to which the governmental action would interfere with the potential for agricultural development of the private property of owners.

(6) Whether the proposed governmental action restricts or prohibits a use which is already prohibited by existing law.

(7) Alternatives to the proposed action that would lessen or eliminate any adverse impact on private agricultural property.

(8) An estimate of the cost to the governmental entity if the entity is required to compensate one or more private agricultural property owners.

(9) The identity of the source of payment within the entity's budget or otherwise for any compensation that may be ordered.

C. If there is an immediate threat to health and safety that constitutes an emergency, requires immediate governmental action, and prohibits the timely production of the assessment required in this Section, then the assessment shall be made at the earliest possible time after the governmental action is completed.

D. The governmental entity preparing the assessment shall deliver copies to the governor, the commissioner of agriculture and forestry, and any affected landowners.

E. The commissioner of agriculture and forestry shall promulgate guidelines for owners of private agricultural property and governmental entities to assist in determining what governmental actions are likely to result in a diminution of value of private agricultural property.

§ 3:3610. Private agricultural property owner's right of action; remedies

A. An owner of private agricultural property may bring an action against a governmental entity to determine whether the governmental action caused a diminution in value of a parcel of private agricultural property in which the owner has an interest. The owner of the affected private agricultural property shall show that the diminution in value did not result from a restriction or prohibition of a use of the private agricultural property that was not a use already prohibited by law.

B. An action brought under the provisions of this Section may be filed in the state court that has jurisdiction over the property and the owner shall be entitled to a trial by jury.

C. Owners and governmental entities are encouraged to seek resolution of actions brought under this Section through mediation or any other mutually agreeable alternative dispute resolution method prior to the filing of any action. When a pending action has not been the subject of an attempted mediation, the court may require the parties to attempt mediation at any point in the proceedings prior to trial.

D. In an action brought pursuant to this Section, upon a determination that a governmental action caused a diminution in value of private agricultural property, the owner shall, at the option of the owner, recover a sum equal to the diminution in value of the property and retain title thereto, or recover the entire fair market value of the property prior to the diminution in value of twenty percent or more and transfer title to the property to the governmental entity.

E. The court in issuing any final order in any action brought pursuant to this Section may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing party in addition to other remedies provided by law.

F. If a property owner prevails in a suit filed as provided in this Section, the governmental entity may rescind or repeal the rule or regulation which caused the diminution in value of the property, and if such rule or regulation is rescinded or repealed the governmental entity shall be liable for damages sustained by the property owner to his affected property which were caused by the application of the rescinded or repealed rule or regulation.

§ 3:3611. Determination of property value

In determining the assessed value of real agricultural property for ad valorem purposes, a governing authority shall reduce the assessment by the diminution in value as determined by the court or, in the absence of a court determination, by the appropriate assessing official. No such assessment shall be retroactive.

§ 3:3612. Restrictions and limitations

A. Nothing in this Part shall restrict any other remedy or right that any person or class of persons may have under any other provision of law.

B. Nothing in this Part shall limit or change any requirement of the Louisiana Administrative Procedure Act and the Louisiana Code of Civil Procedure.

C. Nothing in this Part shall apply to any governmental action where the purpose of the said governmental action is the regulation of agriculture or the regulation of agricultural activity by a governmental entity charged with the responsibility of promotion, protection, and advancement of agriculture.

Part II. Right to Forest

§ 3:3621. Citation; legislative findings; purpose

A. This Part shall be known and may be cited as the Louisiana Right to Forest Law.

B. (1) The legislature hereby finds and declares that forestry is an essential contribution to the economy of the state.

(2) The legislature further finds that the purpose of this Part is to allow owners of property classified as forest land to conduct activities relating to forest production or if a governmental entity prohibits or severely limits such activities, to compensate the owners for their losses.

§ 3:3622. Definitions

As used in this Part, the following terms shall have the following meanings:

(1) "Forest activities" means any activity on forest land associated with the reforestation, growing, managing, protecting, and harvesting of timber, wood, and forest products.

(2) "Forest land" means any land in the state devoted to the growing of trees or the commercial production of timber, wood, or forest products that is located outside the corporate limits of any municipality. Land which is assessed for a use value under the provisions of R.S. 47:2301 et seq. shall be presumed to be forest land.

(3) "Governmental action" means annexation of territory by a governmental entity or the issuance of a rule, regulation, policy, or guideline promulgated for or by any governmental entity, or an order or other legally binding directive having the force of law or capable of being enforced by government which prohibits or limits the right of an owner to conduct forestry activities on forestry land. Governmental action does not mean the following:

(a) A formal exercise of the power of eminent domain.

- (b) A result of police power to prohibit activities that are harmful to the public safety and health.
- (c) An order issued as a result of a violation of law.
- (d) The adoption, enactment, repeal, or amendment of a statute or resolution by the legislature.
- (e) A government action directed or mandated by an order of a court of competent jurisdiction.
- (f) Law enforcement activity involving the seizure or forfeiture of private forest land for a violation of law or as evidence in a criminal proceeding.
- (g) Action taken to enforce a mortgage or other valid security device.
- (h) Actions taken in compliance with federal law or regulation.

(4) "Governmental entity" means:

- (a) A board, authority, commission, department, office, or agency of the state government.
- (b) A local governmental subdivision with a population of less than four hundred twenty-five thousand.
- (c) A special purpose district.

(5) "Owner" means a person owning an interest in forest land at the time a governmental action becomes effective as to the forest land in which the owner owns an interest.

(6) "Prohibits or limits" means an existent reduction of twenty percent or more of the fair market value of forest land, or any portion thereof, or property rights thereto associated with conducting forestry activities on forest land before the action.

§ 3:3622.1. Impact assessment

A. A governmental entity shall prepare a written assessment of any proposed governmental action prior to taking any proposed action that will likely result in a diminution in value of forest land.

B. The written assessment shall include written analyses and conclusions concerning:

- (1) A clear and specific identification of the governmental action and the purpose of the governmental action.
- (2) Whether the governmental action would constitute a physical invasion or occupation of forest land.
- (3) The length of time that the governmental action would interfere with the use of forest land.
- (4) Whether the governmental action would result in a diminution in value as to the affected forest land and, if so, the extent thereof.
- (5) The extent to which the governmental action would interfere with the potential for forestry development of the property of owners.
- (6) Whether the proposed governmental action restricts or prohibits a use which is already prohibited by existing law.
- (7) Alternatives to the proposed action that would lessen or eliminate any adverse impact on forest land.
- (8) An estimate of the cost to the governmental entity if the entity is required to compensate one or more forest landowners.
- (9) The identity of the source of payment within the entity's budget or otherwise for any compensation that may be ordered.

C. If there is an immediate threat to health and safety that constitutes an emergency, requires immediate governmental action, and prohibits the timely production of the assessment required in this Section, then the assessment shall be made at the earliest possible time after the governmental action is completed.

D. The governmental entity preparing the assessment shall deliver copies to the governor and the commissioner of agriculture and forestry, and any affected landowners.

§ 3:3623. Landowner's right of action; remedies

A. An owner of forest land shall have a cause of action against a governmental entity for damages resulting from governmental action which prohibits or limits an owner's ability to conduct forestry activities on forest land in which the owner has an interest.

B. An action brought under the provisions of this Section may be filed in the district court that has jurisdiction over the property and the owner shall be entitled to a trial by jury, provided that the requirements of R.S. 13:5105 are met.

C. In an action brought pursuant to this Section and subject to the provisions of R.S. 13:5105 et seq., upon a determination that a governmental action caused a diminution in value of forest land resulting in prohibition or limit of use in violation of this Part, the owner shall recover a sum equal to the diminution in value of the property and retain title thereto.

D. The court in issuing any final order in any action brought pursuant to this Section may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing party in addition to other remedies provided by law.

E. A subsequent repeal or rescission by the governmental entity of the governmental action, which is the subject of a suit, shall not preclude the owner of the right to recover damages resulting from such action and in the discretion of the court, reasonable attorney and expert witness fees.

§ 3:3624. Restrictions and limitations

Nothing in this Part shall restrict any other remedy or right that any person or class of persons may have under any other provision of law.