

Summary of the Michigan Right to Farm Act and the new “Beekeeping and Apiary Management” Chapter of the Care of Animals GAAMP

In 1981 the Michigan Legislature passed the Michigan Right to Farm Act (RTFA). In sum, the RTFA is a state law that preempts, or trumps, conflicting local zoning ordinances in the area of agricultural zoning and offers farmers who comply to Generally Accepted Agricultural Management Practices (GAAMPs) a defense against nuisance lawsuits.

A GAAMP is essentially a best practices guide for a farmer (or beekeeper in this case). GAAMPs are drafted by a GAAMP committee that is made up of “experts” in various agricultural fields, representatives from agricultural associations, and sometimes a community member.

A farm must satisfy a three-part test to avail itself of the benefits of the RTFA: it must (1) be a “farm” or “farm operation;” (2) be commercial in nature; and (3) conform to GAAMPs.

(1) Farm or Farm Operation.

The first part of the test requires a farming operation to meet the statutory definition of a “farm” or “farming operation.” The Act defines “farm” as “the land, plants, animals, buildings, structures . . . used in the commercial production of farm products.”¹ Additionally, “farming operation” is defined as “the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products”² Both definitions require a farm or farm operation to produce “farm products.”³ Therefore, a “farm” or “farm operation” must initially meet the statutory definitions of these terms and also must produce a “farm product” to qualify for protection under the Act.

(2) Commercial in Nature.

The second part of the test requires that a farm or farming operation be engaged in the “commercial production” of farm products. According to the Michigan Court of Appeals, “commercial production” means producing or manufacturing any item marketed and intended to be sold for profit.⁴

The Act defines “farm product” as “plants and animals useful to human beings produced by agriculture”⁵ However, the Act only provides protection for the commercial production of “farm products;” therefore, a land owner must be engaged in

¹ § 286.472(a).

² § 286.472(b)

³ § 286.472(a), § 286.472(b).

⁴ § 286.472(a), (b); *Charter Township of Shelby v. Papesh*, 267 Mich. App. 92, 704 N.W.2d 92 (2005) at 99.

⁵ § 286.472(c)

“commercial production,” as defined by the Michigan Court of Appeals, and must be producing “farm products,” as defined by the Act and interpreted by the courts, to qualify for protection from nuisance suits and local zoning ordinances.⁶

The definition of “commercial production” developed by the Court of Appeals requires that the farm products are produced or manufactured with the *intent* that they will be marketed and sold for profit. As a result, it is likely that a farmer who fails to actually market or earn a profit from the sale of farm products, but intended to do so, will still meet the definition of “commercial production” under the Michigan Right to Farm Act.⁷

(3) Conform to Generally Accepted Agricultural Management Practices (GAAMPs).

The third part of the test requires a farm or farming operation that engages in commercial production of farm products to conform to all GAAMPs. A GAAMP is a voluntary practice defined by the Michigan Commission of Agriculture.⁸ Farmers are not required by law to conform to the GAAMPs; however, a farmer who does not conform to the applicable GAAMPs is not protected from nuisance suits and local government action. For beekeepers, the only GAAMP that currently applies is the “Beekeeping and Apiary Management” chapter of the Care of Animals GAAMP.

Beekeeping and the GAAMP

The “Beekeeping and Apiary Management” chapter of the Care of Animals GAAMP begins with general beekeeping information. It then goes in to more specifics such as recommended hive densities for fractions of acres of various crops; distances apiaries should be set from property lines; hive placement within the apiary; ensuring a fresh water source to keep your bees out of your neighbor’s pool; controlling diseases in your colonies; transporting bees; etc. Nothing in this chapter should be a surprise for the conscientious bee keeper.

That’s Great, but What Does it Mean for Me?

Before siting an apiary:

1. Review the zoning ordinances of the city or township in which you intend to site your apiary (permanent and seasonal). The ordinance will likely (a) permit all agricultural uses, (b) permit many agricultural uses while excluding others, or (c) exclude all agricultural uses.
 - a. If the ordinance permits agricultural uses, skip to number 2 and continue with the rest of your inquiry.

⁶ Papesh at 99, *supra*

⁷ *Id.* at 102.

⁸ § 268.472(d)

- b. If the ordinance permits some agricultural uses, but excludes specifically beekeeping, you have a couple of options.
 - i. Apply for a variance from the municipality. A variance is essentially official authorization to depart from a zoning law. This typically involves notifying all of the surrounding neighbors that you would like to site an apiary on your (or another's) property, getting their written permission to do so, presenting your case to a zoning board of appeals, etc. Note that this may take a few weeks depending on the zoning board's schedule and particular requirements.
 - ii. Request a pro-active RTFA inspection from the Michigan Department of Agriculture's Right to Farm Act program. Pro-active inspections are rarely performed (most inspections are complaint based). A potential result could be a letter from MDA which states that your operation does (or does not) comply with GAAMPs; you could send this to the municipality in which you intend to site your apiary.
 - c. If the ordinance excludes agricultural uses, or beekeeping specifically. Request a pro-active RTFA inspection from MDA (as above).
2. Run your particular situation through the three-part test:
- a. *Is your activity a "farm" or "farm operation" under the act?* It probably is because a "farm" is "the land, plants, animals...used in the commercial production...of farm products."⁹ Bees are animals. And a "farm operation" is "the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products . . ."¹⁰
 - b. *Is your activity "commercial in nature?"* Your activity is likely commercial in nature if you are managing bees with the intent of selling the honey, wax, pollen, bees, etc.
 - c. *Does your activity conform to GAAMPs?* Follow the GAAMP.
3. Study the "Beekeeping and Apiary Management" chapter of the Care of Animals GAAMP. Follow the GAAMP guidelines paying particular attention to water sources, distance from property lines to the apiary, hive densities vis-à-vis number of acres, etc. It would be useful to err on the side of caution when siting apiaries in more densely populated areas; educating neighbors about honey bees.

⁹ § 286.472(a).

¹⁰ § 286.472(b)

So, What Does This Get Me?

At least three things. First, and importantly, this structure provides the beekeeper the opportunity to educate neighbors, municipal officials and others about beekeeping. The educational opportunity might arise through the variance to a zoning ordinance process – speaking with neighbors about the importance of bees as pollinators; inviting neighbors to look at your apiary; making sure that they understand that honey bees are not yellowjackets, etc. It also helps the beekeeper be more intentional about siting apiaries and approaching neighbors.

Second, zoning. If your operation passes the three-part test outlined above, and the municipality in which you intend to site your apiary has zoned out beekeeping, the RTFA could be used to supersede the local zoning laws. The result could be that you could legally site your apiary in an area that initially appeared foreclosed to you.

Third, if your operation passes the three-part test outlined above, the RTFA could provide a defense against nuisance lawsuits. A nuisance lawsuit could be brought alleging that ones act, or omission, has caused an interference with a person's use and enjoyment of their property. So, in our case, a neighbor might sue a beekeeper alleging that because the beekeeper's apiary does not have an adequate water source the honey bees are attracted to the neighbor's pool, interfering with their use and enjoyment of their property. If the beekeeper has satisfied the three-part RTFA test and has a letter from MDA attesting to the beekeeper's GAAMP compliance, the neighbor would not be permitted to bring this particular legal claim against the beekeeper.