

## Corporate Farming Laws - An Overview\*

Several states have statutes or constitutional provisions that restrict the power of certain corporations to engage in farming or agriculture, or to acquire, purchase, or otherwise obtain land that is used or usable for agricultural production. Such legal provisions are commonly referred to as corporate farming laws, or anti-corporate farming laws. Most corporate farming laws are enacted as statutes rather than constitutional amendments. Nine states have laws that prohibit or limit corporate farming: South Dakota, North Dakota, Oklahoma, Iowa, Minnesota, Wisconsin, Nebraska, Missouri, and Kansas.

The primary goal of corporate farming laws is to protect the economic viability of family farms in light of the threats from competition with corporate-owned or corporate-managed farms. Some proponents also argue that corporate-owned or managed farms are more likely than family farms to inflict serious environmental damages and will be unfairly protected from liability by the farms' corporate status. Opponents of corporate farming laws commonly argue that these laws are unnecessarily restrictive, ineffective, anti-capitalistic, and are unconstitutional because they impede a vibrant free trade economy among the states.

Corporate farming laws vary from state to state but typically establish a general prohibition on corporate farming activities, set out certain exemptions to the general prohibition, and provide a legal mechanism for forcing corporations to divest ownership of land held in violation of the law. Some corporate farming laws exempt cooperative associations from their restrictions, provided certain conditions are satisfied. Others permit corporations to acquire farmland even though the corporation would otherwise be prohibited from engaging in farming or purchasing the agricultural land. For example, corporate farming laws typically permit a bank to acquire land if the acquisition is undertaken for the purpose of collecting a debt or enforcing a legal security interest. The same laws, however, will generally limit the amount of time the bank or other type of corporation can maintain an interest in that land and will often restrict the ability of the corporation to use that land.

Several corporate farming laws exempt "family farm corporations." To qualify as a family farm corporation, the entity typically must be comprised of family members who are within a certain degree of kinship and who must own a majority of the voting stock in the corporation. A common requirement is that the shareholders in a family farm corporation be natural persons rather than a corporate entity. Six of the state statutes limit the number of shareholders an authorized corporation can have. Another common requirement to satisfying the family farm corporation exemption is that at least one family member must reside on the farm to prevent "absentee ownership," a characteristic proponents of corporate farming laws often attribute to corporate farming activities.

A number of courts, including the United States Supreme Court, have heard challenges to these laws on the basis that they were in violation of the Equal Protection Clause, Due Process Clause, Privileges and Immunities Clause, and Contract Clause of the United States Constitution. In the context of these challenges, courts consistently upheld the constitutionality of the anti-corporate statutes. During the twentieth century, no state appellate court or federal court held that a state's corporate farming law was unconstitutional. In 2003, however, the United States Court of Appeals for the Eighth Circuit held in *South Dakota Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583 (8th Cir. 2003) that a corporate farming law enacted as a voter-approved amendment to the South Dakota constitution was unconstitutional because it violated the dormant Commerce Clause of the United States Constitution. The dormant Commerce Clause has therefore become a popular choice for challenging corporate farming laws. See, e.g., *Smithfield Foods, Inc. v. Miller*, 241 F.Supp.2d 978 (S.D. Iowa 2003) (holding that Iowa's

corporate farming law violated the dormant Commerce Clause and was discriminatory on its face, in its purpose, and in its effect).

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