

# Iowa Legislative Session Update

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## SUMMARY KEYWORDS

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## SPEAKERS

Speaker 3, Christine Tigran, Christa Hartsook

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-  **Christa Hartsook 00:15**

Hello, and welcome to the small farms podcast, a prediction of the small farms program at Iowa State University Extension and Outreach. Our podcast covers the opportunities and challenges associated with rural life. In this episode I visit with Christine Tigran, Director of the Center for Agricultural law and taxation at Iowa State University. And we're talking about Iowa legislative updates, some case law updates, and federal issues of particular interest to farmers. I'm Christa Hartsook, small farms program coordinator, and we hope you enjoy the show. Christine, welcome. Thanks for being back.
-  **Christine Tigran 00:50**

Thanks, Krista. It's good to be here.
-  **Christa Hartsook 00:53**

So let's just jump right in and talk a little bit about some key updates from the Iowa legislative session that we've had, I know, we have a couple of issues in terms of zoning that we wanted to highlight.
-  **Christine Tigran 01:06**

Sure. So it was a really interesting legislative session, I think mainly because it was paused because of COVID. So a lot of things were different this year, but one of the focuses of the legislature seem to be looking at farms and looking at zoning regulations imposed by counties. And so sort of an overarching principle that we see emerging from this session is that the state really wants to be in control of regulating agricultural production. And it doesn't want to allow the counties to really go down that path and start imposing additional burdens, additional regulations, additional zoning requirements on farmers. And so one of the laws that was passed, it's called HF2477. And what it deals with is, is something that's newly defined as

agricultural experiences. And so the purpose the law itself says, Okay, we want to protect farmers, and allow them to offer agricultural experiences to people. And so what are agricultural experiences? Well, it's really defined as anything that is a secondary use in connection with your actual agricultural production. So first of all, there has to be agricultural production going on. And then the farmer has to open the activity up to the public with the purpose of promoting or educating the public about agriculture, talking about agricultural practices, allowing the public to experience agricultural activities or agricultural products. So that's the definition. It's a little bit unclear exactly what all that covers. But I think it is intended to say, if you are a farmer, and you're growing food, you should be able to have a farm to table experience without a county requiring a special permit. Specifically, the law says counties cannot impose special exceptions, variances, conditional use permits or special use permits. Those are the four categories of regulation that counties are prohibited from imposing upon a farm that wants to offer an agricultural experience. So that's sort of the intent of the law. One of the things that was asked during the debate, so right when you have a new law, and there's a lot of debate, because these laws were not 100% uniform in acceptance, there were people opposing them, there were people promoting them. So typically, you know, that's the way it is with a particular law. But some of the questions during debate were okay, does this mean that a county would not have the ability to regulate a rock concert held on a farmer's property? Right, so you think about those that, you know, Woodstock style festivals, does that mean a farmer now could open up his property and the county would have no ability to do anything? And the answer given on the floor was no, that this law wouldn't apply to that because that is not an agricultural experience. That is not an agricultural activity. The same question was asked about a wedding. Would this also mean that a county could not come in and suddenly regulate a farmer that wanted to open his or her property up to hosting weddings on the weekends? And the answer given on the floor was that too is not an agricultural experience? So it seems like the intent of the law would be to allow agricultural producers to bring groups of people onto their property, to show them what a farm is like to host a Harvest Dinner, to perhaps sell some farm products, those types of things. But those activities seem to have to be tied to the actual agricultural activity going on and there actually has to be a farm, there actually has to be some kind of production happening.

 Christa Hartsook 05:24

That makes sense, Christina. And I'm assuming that would also then apply to those producers out there wanting to hold field days, for example, to really talk about the practices they've put into place.

 05:35

Absolutely. That's a great example where I want to say, hey, look, come out, see how I've implemented my cover crops or I've got these great conservation practices that they're newer. And we'd like to show you how those work and hosting a group of people the losses, yeah, you don't have to apply to your county to get some sort of special use permit to be able to do that. So that that's, that's pretty helpful. One thing, though, is that this does only restrict the counties from imposing these extra zoning laws, these extra permitting laws, it does not restrict the county from imposing any sort of regulation on these activities. So I think it's a little unclear how this will actually be enforced. Like in even law, there might have to be some actual enforcement activities that a county might attempt to do. So maybe a county would come in

and try to impose some size limitations on a particular event or something in a way outside of specifically what's dictated in the statute. And then perhaps the farm would challenge that, and we'd see that go to court. That's typically how law works, right? With best intention, we write a law that's as clear as we possibly can make it. But then holes are found all over the place. I mean, it's just the way it works. So this too, is one of those laws that perhaps will get clarified, as we have a couple of cases that go to court to say, you know, what exactly does this apply to? But generally speaking, right, it's intended to prohibit counties from really imposing burdens on agricultural producers who want to share good agricultural experiences with the public.

 Christa Hartsook 07:24

That sounds great. Thank you, Christine. I know we had another state law, again, pertaining to the those county guidelines and what the counties could impose.

 07:34

Right. So it was an interesting session, because there was a lot of talk about county regulation of agricultural activity. And this was a really big law that was discussed a lot, that the the bill number was HF2512. And the title of the law is to prevent county zoning regulation of agricultural exempt property. And these things can make your eyes roll to the back of your head right when you just listen to the technical details of them. But essentially, the impetus for this law, right, there's always got to be a reason why a lawmaker brings a particular law to the table to pass. And in this particular case, a group of producers were concerned about, in particular, a county in Iowa Johnson County that had created a new regulations and new ways to they called it the unified development ordinance, right, and sort of imposing new steps as part of their comprehensive zoning plan for the county. And one of the concerns was the agricultural exempt property has long been exempted from county regulation. That's just state law. Right. So Iowa law has said county zoning regulations do not apply to agricultural land, agricultural buildings that would include barns, it even includes houses like farm houses that are truly part of the agricultural property. But over the years, it's been difficult first of all, to know exactly what is agricultural exempt property? Because the law isn't terribly clear and different counties have different ways that they interpret it. The law says structures and buildings and farm barns that are primarily adapted for use for agricultural purposes. Okay, so that's the the way the law reads, and that hasn't been terribly clear. But what this ordinance one of the things they talked about doing was requiring farmers or producers, and it got narrowed down to where this requirement would only apply to farms or rural areas with less than 40 acres. Right. And if somebody wanted to build a building, and in particular, the concern was a confined animal feeding operation, right? So I want to build a confined animal feeding operation on a parcel of land that's less than 40 acres, then this county wanted to require an application and a public hearing, and a determination of whether or not that use was actually covered by the state exemption. So right we have a state exemption, which exempts counties from actually imposing zoning requirements on agricultural exempt property. But this interim step would say, Okay, we get that but, we have the ability to determine whether or not it's agricultural exempt in the first place. So we're going to impose applications and and hearing and all of this. So there was a lot of concern by farmers, livestock farmers in particular, that they were going to be required to go to these public hearings, and that perhaps their agricultural use would somehow not pass muster in the county eyes. And they were concerned

that this was circumventing state law, which says this is a state issue, not a county issue, determining whether these types of buildings can be built. Because right, if you're agricultural exempt, you can go build a corn crib, you can go build a grain bin, you can build a farm building without having to get a county permit, I don't have to get the building permit or the commercial permit that a commercial enterprise would have to get Sure. So that's what the state law is meant to protect. And so the concern was, okay, if you're now having a certain application process, to require us to prove that we're exempt from that requirement, you're essentially imposing a requirement that was forbidden in the first place. So what the legislatures did is they came in and they said, Okay, we're gonna create a new law. And the new law says, a county cannot require an application, an approval, or the payment of a fee, in order for an ordinance to be deemed inapplicable to land, farm barns, farm out buildings, or other buildings that are primarily adapted for use for agricultural purposes. So the purpose of that right on its face is obviously to say, Okay, you're not allowed to have these hearings, you're not allowed to require these applications. If I want to build a capo, and I'm a farmer, you cannot impose that requirement on me. So where some of the ambiguity lays, is let's say that I'm a new farmer. And I haven't ever conducted agricultural activity before. Or I'm moving in from out of state, I'm going to build a house. And I'm going to say, I'm going to have some cattle or I'm going to have some horses. So some of these more ambiguous activities, that some of them are not so clear, as far as whether they actually are agricultural exempt. So does this law is it going to prohibit sort of a voluntary application? So a lot of counties have in the past had a voluntary application where you get to test the waters, so to speak, you will apply with the county to say, Hey, do you agree that this is exempt? Do you agree that your zoning laws, your regulations do not apply to me? So the alternative would be I build it? And then the county steps in and says, Oh, that's not an agricultural purpose? That's not agriculture. That's not primarily adapted for agricultural use, you're not exempt. And guess what? You violated the county. Right. And that's really bad like that. Yeah. Yeah. The last thing you want is for the county to step in with enforcement. So this law is a little bit ambiguous in terms of can county still have this voluntary process? So it seems very clear that you cannot impose it. But can you allow producers to apply or or allow landowners who might be exempt might not be to apply and get feedback? So, again, with any new legislation, there are questions and that's just one of the questions I think that we have with this. One of the other things that this law did clarify, is that land enrolled in a soil or conservation program, so if you're involved in CRP or something like that, it qualifies for the agricultural exemption. So that was a helpful clarification. Some counties said it did. Some counties said it didn't. So it's always helpful when the legislature comes in to sort of clarify, something that's been a concern. So that's the the purpose. I mean, the the overarching intent and the legislators who were promoting this at the intent is to prevent counties from just imposing additional burdens on otherwise exempt properties. So we'll see how it plays out.

 Christa Hartsook 15:20  
more clarification to come.

 15:22  
Exactly, so another law Christa, I don't know if your listeners have had a podcast before talking about the hemp law that was passed last year.



 Christa Hartsook 15:35

I think that would be of great interest to our listeners.

 15:37

So yeah. So as many of you know, it all kind of started back with the farm bill of 2018. And suddenly, Congress, the federal government, Congress decided that we're going to legalize the production of hemp. Right, so before the farm bill, it was illegal to grow hemp, because technically, it was covered by the federal drug laws, it was a schedule one offense to possess hemp, because it was just the same, considered the same thing as marijuana, right. So the new laws set a level of how much THC you can have in a particular plant and said, okay, as long as you stay underneath of that, we're going to create the ability for farmers to raise hemp, because there might be uses for it. Now, something outside of the scope of this podcast is, is there really a market for this product?

 Christa Hartsook 16:32

That'll be a next podcast, Yeah.

 16:35

Yeah. So I wouldn't advise anyone to rush out, and, and start growing this with the idea that you're going to make buckets of money until this sort of market kind of settles down, and you figure out whether there is a market for this. However, there's been a lot of interest in it. And so the federal government allowed it. And then last spring, a year ago, Iowa followed suit and authorized it to be produced in Iowa, and then sort of the regulatory process went into effect, because it wasn't going to actually be legal. And it wasn't legal until we actually got regulations in place. So those regulations finally got in place in April. And it is legal to grow hemp in Iowa. Well, after a year of sort of looking at this, having it on the books, and now having sort of the first growing season where farmers could be raising him, the legislature had a little bit of time to figure out, are there additional things that we should have put in the law? Have there been snags? Have there been things people wanted? And so one of the areas that kind of became clear is that actually one of the markets for this product, right? There's not such a market for rope and some of the other fibers that that you might hope, but where the market has been is consumables, right? Or CBD or things being able to use the product in those ways. And so what this law does is it actually allows it to become legal in Iowa to produce consumable hemp products. So you might have heard I mean, there's been some enforcement actions throughout the State this past year. In fact, even in an Keoni, a business was prevented and law enforcement came in to prevent the sale of, of consumable hemp. And so now the Iowa law is sort of paving the way for that to be legal. The law says that consumable CBD products may be sold, as long as you're registered with the Iowa Department of inspection and appeals, and then you have to follow the labeling and packaging requirements. So it sounds pretty straightforward, but you can't just go do it yet. Because what this really did is it just sort of set off the beginning of the creation of regulations that will open the door for this to happen. And it's pretty complicated. Yeah, so it sounds pretty straightforward, but okay. It's legal to consume it according to Iowa law. But the FDA and the federal law still has a lot of restrictions in terms of what can you consume, and what is not consumable. And the Iowa Department of

inspection and Appeals has to license the people who are going to or register the people who are going to manufacture this and the people who are going to sell it. And so they're trying to figure out what their process is going to be how they're going to be able to license or authorize the production of consumables if perhaps the federal regulatory bodies are saying that they're not authorized. And so let me just say, I think there's a lot of answers that we haven't received yet, but just know it's a work in progress. The other thing that the law did do is specifically ban enhalable hemp, so you're not gonna be able to smoke it legally in Iowa that's not on the table that's not in the works. And it did impose some penalties if you were caught violating that law. So that's sort of the latest update on hemp in terms of things that the Iowa legislature did, again, just kind of setting off the beginning of the regulatory process that has to that has to take place. So I guess I'd say stay tuned to the Iowa agencies, and they'll be posting updates on that.

**C** Christa Hartsook 20:30

Another one of more to come.

**C** Christine Tigran 20:32

Exactly.

**C** Christa Hartsook 20:34

Christina I know, one other thing that the legislature did was provide some protection for farmers involved in specifically livestock food production. You want to talk about that one?

**C** Christine Tigran 20:45

Sure. So this has been a very long drawn out difficult process. And the idea is how do agricultural producers protect themselves from outside groups, or people trying to come onto their property without their permission, perhaps they are applying for a job under completely false pretenses. And the only reason they want to get onto the property is so they can film and expose about what agricultural production looks like, and post it to social media and show sort of the underbelly of agriculture the part that's not so pretty, right, right, right. And so there's this concern, there's a lot of concerns that arise from this from the standpoint of biosecurity, you have people coming onto your property, uninvited, unauthorized, food production is so dependent upon biosecurity for the protection of the consumers, right, we cannot have people coming in without the proper protection and things like that. And yet, it's been a real challenge to create any special laws that are specifically targeted to this, because of the idea that part of what is probably being banned when we protect the producer, is the freedom of speech of the undercover operator who's coming onto the farm to see what's happening. And so this has been a tension in the law for a number of years outside of agriculture, right? It's just the idea of how far does the freedom of speech take you in terms of being able to lie, being able to be deceptive as far as what you're really doing, so that you can have the ability to speak out on a particular product, or a particular operation or anything, right. And so our first attempt at a law was in 2012. And that particular law was overturned by a federal district court. And that law

was overturned with the idea that it did violate the First Amendment, because it prevented people from being able to actually film things. So our history of laws that sought to really sort of protect agricultural producers goes back to 2012. And in 2012, we had a law that prohibited what was called agricultural production facility fraud. And what that did is it said, Okay, you cannot access an animal production facility under false pretenses. You can't make false statements to get a job with the intent to commit unauthorized acts on the premises. And so the idea was, okay, yeah, we don't want people working in these animal facilities, who aren't really there for the intent of helping the facility who are really there with the intent of sort of exposing things that are going on there. And so that law was challenged several years ago and the beginning of 2019, the United States District Court for the Southern District of Iowa said it was unconstitutional. Now, this was not the first set case to go up to a federal court. We've had some courts from around the country who have been looking at these laws. And a lot of times you'll hear the laws called Ag Gag laws, right? The idea is, okay, you're just trying to shield agriculture from scrutiny that is designed to protect consumers, right. The idea is, consumers need to see how their food is produced and you're just trying to shield the producers from that scrutiny that is very necessary to sort of keep the process transparent and open. And producers say no, we want to be transparent. I'm just trying to give all the sides here, we want to be transparent. But we also have to keep practices safe. We have to worry about biosecurity, we have to have employees who are wanting to serve the animals and then take care of them and not introduce contaminants and not, you know, jeopardize the ongoing health of the operation to see what's happening in order to film their expose. And so these are the tensions that have been there. When the court looked at it, though the court looks specifically at the Iowa law from 2012. And said, really what it was doing when it was banning the false statement was violating the First Amendment right to free speech. Now that might make some listeners take pause and say, what how can a lie be protected by the First Amendment. But the US Supreme Court has actually said that that's the case. In many instances, one of the quotes from the court is one of the costs of the First Amendment is that it protects speech that we detest, as well as speech that we embrace, right. So even though we may not like it, the First Amendment can protect speech that is not preferred, like it can actually protect lying in some cases. And in this particular case, the Federal Court said that this law violated that right. So that particular ruling is on appeal. It hasn't been decided it will continue to move through the system, the state is, has appealed that decision. In the interim, the legislature last year, passed another law. It went into effect March of 2019. So this was the prior session to this year. And that one was called the agricultural production facility trusts pass law. Now this one was a little bit different. Because the prior law did not require actual harm. It only required the access to the facility to be unauthorized. So the second bite at the apple so to speak, was the legislator had looked at some cases that have gone up to other courts and said, okay, in some cases, laws have been upheld, where it showed that the person who was trespassing had the intent to cause actual harm or injury. And so they wrote that into the law with the idea that that might allow the law to pass constitutional muster. Well, back to court right. And the same court struck that law down as well. Now, of course, that that case is not done, either. Right. The there's motions for summary judgment, that the law actually I misspoke, that law hasn't actually been struck down. It's just been enjoined. While the proceedings occur. The basically what the court has said is okay, the plaintiffs have a pretty good chance of success here. And so we're not going to allow you to enforce that law, while the parties make their arguments as to why the law should be declared unconstitutional. So that debate is still raging and in the meantime, the legislature this session said, Okay, we don't have any protection for our producers, aside from just ordinary trespass laws, which ordinary trespass laws aren't terribly robust. They exist. So if somebody goes unauthorized onto property, they've committed trespass, and that can be prosecuted. But it's not terribly. The rules for trespass are not that terribly harsh in most cases. So they wanted something more specific. So the food operation trespass law says a person

commits food operation trespass, by entering or remaining on property of a food operation without the consent of the person who has real or apparent authority to allow them there. So basically, what this law says is it's a specific law for a food operation, and that it's trespass. And so your first offense here is an aggravated misdemeanor. And your second offense is a Class D felony. And the reason why those penalties are a little bit enhanced from regular trespass is that the law is designed to protect biosecurity and food safety. So the concern is when people trust pass on to a food operation, that's different than just trespassing on to some ones open property, you're actually creating a new risk to the food operation to the food supply chain. And for that reason, it's worthy of sort of extra protection. Now, one of the interesting questions about this is it's talking about a food operation. And so one of the questions is, how far does that go, that the legislature was intending to prevent people from trespassing onto hog farm or, you know, a cattle farm, that type of thing. But legislators on the floor said, Well, what about a kitchen where you're preparing eggs? You know, what about a school cafeteria, I mean, the definition of food operations a little broad. So, again, this is one of those laws, we'll just have to wait to see goes without saying that there will be a legal challenge to it. And we'll just have to see how all the other cases play out this is a very important area, both for the First Amendment, but also for agricultural producers, sort of balancing the safety of the food supply chain, the safety and protection of the producers themselves, and then also the rights of the consumer to know how food is produced, and the right of the journalist or the right of the advocate to be able to investigate those things. So, again, these are tough issues. But this is sort of a latest legislative piece to that puzzle.

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Christa Hartsook 31:33

Yeah. Yeah, latest attempt in and we will see how it plays out. So Christine, this has been a really great wrap up of what has happened in this current session. And I just wanted to say thanks for being on and really kind of distilling some of that knowledge out there for producers.



31:49

Well, thanks for having me, Christa. And we'll just be watching for the next step. Right. Like we'll be watching for any court cases challenging these laws. We'll be watching for regulatory updates. And we'll just keep those updates posted on our website out there. [www.calt.IA.state.edu](http://www.calt.IA.state.edu). So thanks.

C

Christa Hartsook 32:09

Thanks so much, Christine. Appreciate it.

S

Speaker 3 32:11

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