



# Agricultural Law Update

December 2013

## SMOOTH SAILING WHILE TRAVELING ON MICHIGAN HIGHWAYS

- Dirk H. Beckwith

All drivers on public roads must obey the traffic laws. When you're driving a commercial motor vehicle loaded with farm products for use on your farm, there are additional traffic laws that you will need to obey to keep things running smoothly.

### WEIGHT LAWS

Tractors and other farm implements of husbandry moving incidentally on the roads are not subject to the Federal weight laws; however, commercial sized vehicles carrying farm products must follow those laws. All cars and trucks are required to be within legal weight limits whenever they are being driven on the highway.

If police officers, for example, believe a truck is overweight, they can require the driver to pull the truck over to be weighed. If overweight, the driver will have to remove the excess weight and provide for the removal of the unloaded goods.

The officer can issue a citation or order the driver to go to the magistrate who will set the fines for noncompliance. Fines can be \$200 an axle with a maximum of \$600 or can be calculated at a range of 3 cents to 20 cents per pound of excess weight.

A driver who refuses to stop and submit to a weighing is guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a fine of not more than \$100.

The axle loading maximum for farm vehicles transporting a farm product simply from the field to a place of storage was increased by 10% under the Right to Farm Act. The allowed increase, however, doesn't apply to vehicles using an interstate highway or a road subject to seasonal weight restrictions. If your truck is over the 10% allowance, you can be assessed a fine applied to the amount of weight that exceeds the loading maximums without the increase.

During the time of reduced weight under the Seasonal Weight Frost Laws affecting local roads and not state highways, the restrictions may be waived for farm vehicles transporting farm goods if a permit is obtained from the county road commission. The permit, which allows a truck to run with normal weight, must be applied for within 48 hours of the planned travel and must include the route, the date/time of travel and the maximum speed.

### SIZE LAWS

The law exempts tractors and implements of husbandry, but not all farm vehicles, from the height, width and length laws. The law does restrict implements of husbandry from crossing the centerline if headlights are needed to see. Projecting loads of more than 3 feet to the front are prohibited. If a load projects more than 4 feet to the rear it must have a flag during the day and a red lantern at night.

Some vehicles can be both implements of husbandry and a motor vehicle but not at the same time. A dump truck, for example, can be fitted with a spreader. If you're traveling to the field to use it as a spreader, it is an implement of husbandry. If, however, you have the bed full of lime and plan to dump it in the field to be spread by another device, it is a motor vehicle. Each has its own set of rules.

If you're stopped by a police officer, the officer will ask how the vehicle is being used—if it is being used as an implement of husbandry, it needs the retro-reflective tape and a Slow Moving Vehicle (SMV) sign. If it is being used as a motor vehicle it is subject to the Motor Vehicle Code. The nature of its use will determine what, if any, citation is issued.

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**BRAKES**

Generally, commercial motor vehicles must have brakes on all wheels. Tractors and implements of husbandry are exempt from all Federal Safety Regulations including brakes. Again, use matters. For example, if you are using your pick-up truck to haul a hay wagon and the total weight is over 10,000 lbs. you need brakes on all wheels.

**OTHER CONSIDERATIONS:**

- All cattle in the State of Michigan are required to bear Radio Frequency Identification (RFID) tags before they are moved from any property. Two Michigan livestock dealers were heavily fined for transporting calves without tags. One of the dealers also lost his Livestock Dealer's License for 53 months.
- While commercial motor vehicles traveling between the states must meet all the Federal Motor Carrier Safety Regulations, a commercial motor vehicle being driven by a Farm Vehicle Driver is exempted from some of the requirements. For example, farm drivers traveling within the state don't need to keep logbooks or comply with hours of service.
- If traveling interstate, you're not required to maintain a list of violations, document a road test, or maintain

driver files. You must, however, comply with the annual vehicle inspection requirements and have a sticker or an inspection form to prove your compliance. Failure to do so can lead to fines and costs.

- Your Commercial Driver's License (CDL) is a privilege that can be removed for violations of the law. This is true even if the violation occurs while driving your own personal car. If you are convicted of a traffic violation that suspends your operator's license, it will also suspend your CDL.

Of course, the best way to avoid any problems is to be informed of the requirements that apply to you. In general, the statutes that apply to you are the Motor Vehicle Code, the Motor Carrier Safety Act and the Motor Carrier Fuel Tax Act. They can be found at [www.legislature.mi.gov](http://www.legislature.mi.gov). The Federal Motor Carrier Safety Regulations can be found at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Please contact Dirk Beckwith with any questions at 248.539.9918 or [dbeckwith@fosterswift.com](mailto:dbeckwith@fosterswift.com). Dirk is the president of the Transportation Lawyers Association and a member of the Trucking Insurance Defense Association.

**UPCOMING AG EVENTS**

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| <b>Jan. 7, 2014</b>     | MDARD Pesticide Applicator Exam, Sandusky, MI- <a href="http://bit.ly/1aP0oTP">http://bit.ly/1aP0oTP</a>   |
| <b>Jan. 10, 2014</b>    | Irrigation Workshop, St. Johns- <a href="http://bit.ly/19cJh2r">http://bit.ly/19cJh2r</a>  |
| <b>Jan. 13-15, 2014</b> | Michigan Agri-Business Association Winter Conference & Trade Show, Lansing Center, Lansing - <a href="http://bit.ly/HLm3Fc">http://bit.ly/HLm3Fc</a> |
| <b>Jan. 22-23, 2014</b> | Great Lakes Crop Summit, FireKeepers Casino & Hotel, Battle Creek <a href="http://bit.ly/1jKamhr">http://bit.ly/1jKamhr</a>                          |

## COURT OF APPEALS HOLDS RIGHT TO FARM ACT DID NOT APPLY TO THE DENIAL OF A PERMIT FOR A FIELD DRIVEWAY

- Liza C. Moore

The Michigan Court of Appeals recently held that a road commission's denial of a farm's permit application for a field driveway did not implicate the Right to Farm Act (RTFA), MCL 286.471 et seq.

On Oct. 24, 2013, the Court of Appeals issued a for-publication decision (meaning that the decision will be binding precedent for other courts) in *Sena Scholma Trust v. Ottawa County Rd Comm'n*. In this case, the Sena Scholma Trust owned farmland. During wet weather, the farmer was unable to access the field from the existing driveway on 56th Avenue. At the farmer's request, the land owner submitted a permit application to the county road commission for a new field driveway that would grant access to the field from Horizon Lane. The road commission denied the permit, and the land owner and farmer sued under the Driveway Act, MCL 247.321 et seq. and the RTFA. After a bench trial, the trial court held that the road commission was required to grant access to the property from Horizon Lane, relying on both the Driveway Act and the RTFA. The Court of Appeals reversed and remanded.

On appeal, the Court of Appeals analyzed both the Driveway Act and RTFA. The Court determined that the road commission had a sufficient basis for the denial of the permit application and that the land owner and farmer were not entitled to any relief under the Driveway Act. In its analysis, the Court described the differences in the traffic, road width and population along 56th Avenue, where the existing driveway was located, and Horizon Lane, where the new driveway was desired. The Court determined that the

permit denial was within the road commission's discretion.

The Court of Appeals then determined that the RTFA was not implicated by the road commission's actions, and did not apply. The Court analyzed the part of the RTFA that preempts farms and farm operations for certain local laws, MCL 286.474(6). The Court explained that an action by a local unit of government that impairs a farm or farm operation is not preempted by the RTFA if it is not an ordinance, regulation or resolution that purports to extend or revise or that conflict with the RTFA or the GAAMPs. The Court determined that the denial of the permit was not an ordinance, regulation, or resolution that conflicted with or extended or revised the GAAMPs. The Court also wrote that the RTFA was intended to be used as a shield by farmers, rather than a sword. The Court wrote that no provision of the RTFA required local governments to take an affirmative action to allow a farmer to more effectively comply with the GAAMPs.

On Dec. 5, 2013, the landowner filed an application for leave to appeal to the Michigan Supreme Court, seeking review of this Court of Appeals decision. It will likely be some time before the Supreme Court decides whether to review the case.

To read the full opinion in *Sena Scholma Trust v. Ottawa County Rd Comm'n*, please visit: <http://1.usa.gov/18iKV3G>

For more information on the Right to Farm Act, please contact Liza Moore at 517.371.8281 or [lmoore@fosterswift.com](mailto:lmoore@fosterswift.com)

## SPONSORSHIP HIGHLIGHT

Did you make it out to Mason's Winter Fest? Foster Swift sponsored the Winter Fest taking place at the Ingham County Fairgrounds Nov. 29 from 3 p.m. to 9 p.m. The Winter Fest was hosted by the Ingham County

Fair Foundation and the Ingham County Fair Board and Fairgrounds. It featured carnival rides, a craft show, family "Make-n-Takes," a Christmas tree auction, holiday music, hay rides, food and beverages and fireworks.



## LIZA MOORE NAMED "UP & COMING LAWYER" FOR 2013

Attorney Liza Moore was chosen as one of *Michigan Lawyers Weekly's* "Up & Coming Lawyers" for 2013. She was nominated for this distinction for her leadership, mentorship and community involvement. Moore and 25 other attorneys were recognized at the 2013 Up & Coming Lawyers Award Luncheon on Dec. 5.

She distinguishes herself as a leader in the field of Agricultural Law in Michigan. Moore helped found the State Bar of Michigan Agricultural Law Section and was elected as its first chairperson. Additionally, she serves as the group leader of the Agricultural Law group at Foster Swift. Moore leads by example, allowing her to be a role model to other young lawyers and earn the respect of more experienced attorneys.

Moore is also devoted to numerous Michigan agricultural organizations. She is a member of the Michigan FFA Foundation Board of Directors, a member of the Ingham County Fair Foundation Board of Directors and a former volunteer for a 4-H club in Ingham County.

The "Up & Coming Lawyers" award is dedicated to recognizing attorneys who, in their first 10 years of practice, go above and beyond in terms of leadership, mentoring and community involvement while displaying ambition, drive, determination and accomplishments.

## AT THE PODIUM

Seven Foster Swift attorneys will be speaking at this year's MABA Winter Conference & Trade Show Jan. 13-15 at the Lansing Center in downtown Lansing. On Jan. 13 Attorney Dirk Beckwith will present on Transportation Law and Liability, Attorney David Lick will present on "Construction Liability and Other Issues," and Attorney Liza Moore will present "Filling

Third Party (Farmer-Owned) Tanks and Other Liabilities." Attorneys Mike Blum, Ryan Lamb, Sam Frederick and Mindi Johnson will sit on a panel Jan. 15 discussing "Compliance - Best Practices for Following Federal and State Requirements." For more information about the conference and to register, go to: <http://bit.ly/HLm3Fc>

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