

Act No. 94
Public Acts of 1995
Approved by the Governor
June 20, 1995
Filed with the Secretary of State
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Reps. Gnodtke, Gernaat, Randall, Hill, Brackenridge, Lowe, McNutt, Rhead, McManus, Goschka, McBryde, Green, Dalman, Perricone, Alley, Hammerstrom, Anthony, Cropsey and Llewellyn

ENROLLED HOUSE BILL No. 4300

AN ACT to amend the title and sections 2, 3, and 4 of Act No. 93 of the Public Acts of 1981, entitled "An act to provide for circumstances under which a farm shall not be found to be a public or private nuisance," sections 2 and 3 as amended by Act No. 240 of the Public Acts of 1987, being sections 286.472, 286.473, and 286.474 of the Michigan Compiled Laws; and to add sections 3a, 3b, and 3c.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 3, and 4 of Act No. 93 of the Public Acts of 1981, sections 2 and 3 as amended by Act No. 240 of the Public Acts of 1987, being sections 286.472, 286.473, and 286.474 of the Michigan Compiled Laws, are amended and sections 3a, 3b, and 3c are added to read as follows:

TITLE

An act to define certain farm uses, operations, practices, and products; to provide certain disclosures; to provide for circumstances under which a farm shall not be found to be a public or private nuisance; to provide for certain powers and duties for certain state agencies and departments; and to provide for certain remedies for certain persons.

Sec. 2. As used in this act:

(a) "Farm" means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

(b) "Farm operation" means 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, and includes, but is not limited to:

(i) Marketing produce at roadside stands or farm markets.

(ii) The generation of noise, odors, dust, fumes, and other associated conditions.

(iii) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(iv) Field preparation and ground and aerial seeding and spraying.

(v) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.

(vi) Use of alternative pest management techniques.

- (vii) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- (viii) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- (ix) The conversion from a farm operation activity to other farm operation activities.
- (r) The employment and use of labor.

(c) "Farm product" means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture.

(d) "Generally accepted agricultural and management practices" means those practices as defined by the Michigan commission of agriculture. The commission shall give due consideration to available Michigan department of agriculture information and written recommendations from the Michigan state university college of agriculture and natural resources extension and the agricultural experiment station in cooperation with the United States department of agriculture natural resources conservation service and the consolidated farm service agency, the Michigan department of natural resources, and other professional and industry organizations.

(e) "Person" means an individual, corporation, partnership, association, or other legal entity.

Sec. 3. (1) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy determined by the Michigan commission of agriculture. Generally accepted agricultural and management practices shall be reviewed annually by the Michigan commission of agriculture and revised as considered necessary.

(2) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

(3) A farm or farm operation that is in conformance with subsection (1) shall not be found to be a public or private nuisance as a result of any of the following:

- (a) A change in ownership or size.
- (b) Temporary cessation or interruption of farming.
- (c) Enrollment in governmental programs.
- (d) Adoption of new technology.
- (e) A change in type of farm product being produced.

Sec. 3a. (1) The Michigan commission of agriculture shall request the director of the Michigan department of agriculture or his or her designee to investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of manure and other nutrients, agricultural waste products, dust, noise, odor, fumes, air pollution, surface- or ground-water pollution, food and agricultural processing by-products, care of farm animals and pest infestations.

(2) The Michigan commission of agriculture and the director of the Michigan department of agriculture shall enter into a memorandum of understanding with the Michigan natural resources commission and the director of the Michigan department of natural resources. The investigation and resolution of environmental complaints shall be conducted in accordance with the memorandum of understanding. The Michigan commission of agriculture and the director of the Michigan department of agriculture shall develop procedures for the investigation and resolution for other farm-related complaints.

(3) If the director of the Michigan department of agriculture or his or her designee finds upon investigation that the person responsible for the farm or farm operation is using generally accepted agricultural and management practices, the director of the Michigan department of agriculture or his or her designee shall notify that person and the complainant of this finding in writing. If the director of the Michigan department of agriculture or his or her designee identifies the source or potential sources of the problem caused by the use of other than generally accepted agricultural and management practices, the director of the Michigan department of agriculture or his or her designee shall advise the person responsible for the farm or farm operation that necessary changes should be made to resolve or abate the problem and to conform with generally accepted agricultural and management practices. The director of the Michigan department of agriculture or his or her designee shall determine if those changes are implemented and shall notify the person responsible for the farm or farm operation and the complainant of this determination in writing.

(4) A complainant who brings more than 3 unverified complaints against the same farm or farm operation within 3 years may be ordered, by the director, to pay to the Michigan department of agriculture the full costs of investigation

of any fourth or subsequent unverified complaint against the same farm or farm operation. As used in this subsection, "unverified complaint" means a complaint in which the director of the department of agriculture or his or her designee determines that the farm or farm operation is using generally accepted agricultural and management practices.

Sec. 3b. In any nuisance action brought in which a farm or farm operation is alleged to be a nuisance, if the defendant farm or farm operation prevails, the farm or farm operation may recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the farm or farm operation in connection with the defense of the action, together with reasonable and actual attorney fees.

Sec. 3c. (1) Certain real property is subject to those disclosures described in section 7 of the seller disclosure act, Act No. 92 of the Public Acts of 1993, being section 565.957 of the Michigan Compiled Laws. A seller of real property located within 1 mile of the property boundary of a farm or farm operation may voluntarily make available to the buyer the following statement: "This notice is to inform prospective residents that the real property they are about to acquire lies within 1 mile of the property boundary of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan right to farm act."

(2) Certain subdivided land is subject to those disclosures described in section 8 of the land sales act, Act No. 286 of the Public Acts of 1972, being section 565.808 of the Michigan Compiled Laws.

Sec. 4. (1) This act does not affect the application of state statutes and federal statutes.

(2) For purposes of this section, "state statutes" includes, but is not limited to, any of the following:

(a) The county rural zoning enabling act, Act No. 183 of the Public Acts of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws.

(b) The township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws.

(c) Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

(a) House Bill No. 4299.

(b) House Bill No. 4301.

Section 3. This amendatory act shall take effect September 30, 1995.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.