



HOUSE BILL No. 4300

February 2, 1995, Introduced by Reps. Gnodtke, Gernaat, Randall, Hill, Brackenridge, Lowe, McNutt, Rhead, McManus, Goschka, McBryde, Green, Dalman, Perricone, Alley, Hammerstrom, Anthony, Cropsey and Llewellyn and referred to the Committee on Agriculture and Forestry.

A bill to amend the title and sections 2 and 3 of Act No. 93 of the Public Acts of 1981, entitled "Michigan right to farm act," sections 2 and 3 as amended by Act No. 240 of the Public Acts of 1987, being sections 286.472 and 286.473 of the Michigan Compiled Laws; and to add sections 3a, 3b, and 3c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2 and 3 of Act No. 93 of
2 the Public Acts of 1981, sections 2 and 3 as amended by Act
3 No. 240 of the Public Acts of 1987, being sections 286.472 and
4 286.473 of the Michigan Compiled Laws, are amended and sections
5 3a, 3b, and 3c are added to read as follows:

1 TITLE

2 An act to DEFINE CERTAIN FARM USES, OPERATIONS, PRACTICES,
3 AND PRODUCTS; TO PROVIDE CERTAIN DISCLOSURES; TO provide for cir-
4 cumstances under which a farm shall not be found to be a public
5 or private nuisance; TO PROVIDE FOR CERTAIN POWERS AND DUTIES FOR
6 CERTAIN STATE AGENCIES AND DEPARTMENTS; AND TO PROVIDE FOR CER-
7 TAIN REMEDIES FOR CERTAIN PERSONS.

8 Sec. 2. As used in this act:

9 (a) "Farm" means the land, PLANTS, ANIMALS, buildings, ~~and~~
10 STRUCTURES, machinery, EQUIPMENT, AND OTHER APPURTENANCES used in
11 the commercial production AND STORAGE of farm products.

12 (b) "Farm operation" means THE OPERATION AND MANAGEMENT OF A
13 FARM OR a condition or activity ~~which~~ THAT occurs AT ANY TIME
14 AS NECESSARY on a farm in connection with the commercial produc-
15 tion AND STORAGE of farm products, and includes, but is not
16 limited to: ~~, marketed~~

17 (i) MARKETING produce at roadside stands or farm markets.

18 ~~,~~

19 (ii) THE GENERATION OF noise, ~~,~~ odors, ~~,~~ dust, ~~,~~
20 fumes, ~~, operation~~ AND OTHER ASSOCIATED CONDITIONS.

21 (iii) THE OPERATION of machinery and EQUIPMENT NECESSARY FOR
22 FARMS INCLUDING, BUT NOT LIMITED TO, irrigation SYSTEMS AND pumps
23 ~~, ground~~ AND GRAIN DRYERS, AND THE MOVEMENT OF VEHICLES,
24 MACHINERY, EQUIPMENT, AND FARM PRODUCTS AND ASSOCIATED INPUTS
25 NECESSARY FOR FARM OPERATIONS ON THE ROADWAY AS AUTHORIZED BY THE
26 MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS OF 1949,
27 BEING SECTIONS 257.1 TO 257.923 OF THE MICHIGAN COMPILED LAWS.

1 (iv) GROUND and aerial seeding and spraying. ~~the~~

2 (v) THE application of chemical fertilizers OR ORGANIC
3 MATERIALS, conditioners, ~~insecticides, pesticides, and herbi-~~
4 ~~cides, and the~~ LIMING MATERIALS, OR PESTICIDES.

5 (vi) USE OF ALTERNATIVE PEST MANAGEMENT TECHNIQUES.

6 (vii) THE FENCING, FEEDING, WATERING, SHELTERING, TRANSPOR-
7 TATION, TREATMENT, USE, AND CARE OF ANIMALS.

8 (viii) THE MANAGEMENT, STORAGE, TRANSPORT, UTILIZATION, AND
9 APPLICATION OF FARM BY-PRODUCTS, INCLUDING MANURE OR AGRICULTURAL
10 WASTES.

11 (ix) THE CONVERSION FROM 1 FARM OPERATION ACTIVITY TO
12 ANOTHER ACTIVITY.

13 (x) THE employment and use of labor.

14 (c) "Farm product" means those plants and animals useful to
15 human beings PRODUCED BY AGRICULTURE and includes, but is not
16 limited to, forages and sod crops, grains and feed crops, FIELD
17 CROPS, dairy and dairy products, poultry and poultry products,
18 CERVIDAE, livestock, including breeding and grazing, EQUINE,
19 FISH, AND OTHER AQUACULTURAL PRODUCTS, BEES AND BEE PRODUCTS,
20 BERRIES, HERBS, fruits, vegetables, flowers, seeds, grasses,
21 NURSERY STOCK, trees, ~~fish, apiaries, equine~~ MUSHROOMS, and
22 other similar products, or any other product which incorporates
23 the use of food, feed, fiber, or fur, AS DETERMINED BY THE
24 MICHIGAN COMMISSION OF AGRICULTURE.

25 (d) "Generally accepted agricultural and management
26 practices" means those practices as defined by the MICHIGAN
27 commission of agriculture. The commission shall give due

1 consideration to available Michigan department of agriculture
2 information and written recommendations from the Michigan state
3 university college of agriculture and natural resources
4 ~~cooperative~~ extension ~~service~~ and the agricultural experiment
5 station in cooperation with the United States department of agri-
6 culture ~~soil and~~ NATURAL RESOURCES conservation service and the
7 ~~agricultural stabilization and conservation service~~
8 CONSOLIDATED FARM SERVICE AGENCY, the MICHIGAN department of nat-
9 ural resources, and other professional and industry
10 organizations.

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

13 Sec. 3. (1) A farm or farm operation ~~shall~~ IS not ~~be~~
14 ~~found to be~~ a public or private nuisance if the farm or farm
15 operation alleged to be a nuisance conforms to generally accepted
16 agricultural and management practices according to policy ~~as~~
17 determined by the ~~state~~ MICHIGAN COMMISSION OF agriculture.
18 ~~commission.~~ Generally accepted agricultural and management
19 practices shall be reviewed annually by the ~~state~~ MICHIGAN COM-
20 MISSION OF agriculture ~~commission~~ and revised as considered
21 necessary.

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

1 (3) A FARM OR FARM OPERATION IS NOT A PUBLIC OR PRIVATE
2 NUISANCE AS A RESULT OF ANY OF THE FOLLOWING:

3 (A) A CHANGE IN OWNERSHIP OR SIZE.

4 (B) TEMPORARY CESSATION OR INTERRUPTION OF FARMING.

5 (C) ENROLLMENT IN GOVERNMENTAL PROGRAMS.

6 (D) ADOPTION OF NEW TECHNOLOGY.

7 (E) A CHANGE IN TYPE OF FARM PRODUCT BEING PRODUCED.

8 SEC. 3A. (1) THE MICHIGAN COMMISSION OF AGRICULTURE SHALL
9 REQUEST THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF AGRICULTURE OR
10 HIS OR HER DESIGNEE TO INVESTIGATE ALL COMPLAINTS INVOLVING A
11 FARM OR FARM OPERATION, INCLUDING, BUT NOT LIMITED TO, COMPLAINTS
12 INVOLVING THE USE OF MANURE AND OTHER NUTRIENTS, AGRICULTURAL
13 WASTE PRODUCTS, DUST, NOISE, AIR POLLUTION, SURFACE-OR
14 GROUND-WATER POLLUTION, FOOD AND AGRICULTURAL PROCESSING
15 BY-PRODUCTS, CARE OF FARM ANIMALS AND PEST INFESTATIONS.

16 (2) THE MICHIGAN COMMISSION OF AGRICULTURE AND THE DIRECTOR
17 OF THE MICHIGAN DEPARTMENT OF AGRICULTURE SHALL ENTER INTO A MEM-
18 ORANDUM OF UNDERSTANDING WITH THE MICHIGAN NATURAL RESOURCES COM-
19 MISSION AND THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF NATURAL
20 RESOURCES. THE INVESTIGATION AND RESOLUTION OF ENVIRONMENTAL
21 COMPLAINTS SHALL BE CONDUCTED IN ACCORDANCE WITH THE MEMORANDUM
22 OF UNDERSTANDING. THE MICHIGAN COMMISSION OF AGRICULTURE AND THE
23 DIRECTOR OF THE MICHIGAN DEPARTMENT OF AGRICULTURE SHALL DEVELOP
24 PROCEDURES FOR THE INVESTIGATION AND RESOLUTION FOR OTHER
25 FARM-RELATED COMPLAINTS.

26 (3) IF THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF
27 AGRICULTURE OR HIS OR HER DESIGNEE FINDS UPON INVESTIGATION THAT

1 THE PERSON RESPONSIBLE FOR THE FARM OR FARM OPERATION IS USING
2 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES, THE
3 DIRECTOR OF THE MICHIGAN DEPARTMENT OF AGRICULTURE OR HIS OR HER
4 DESIGNEE SHALL NOTIFY THAT PERSON AND THE COMPLAINANT OF THIS
5 FINDING IN WRITING. IF THE DIRECTOR OF THE MICHIGAN DEPARTMENT
6 OF AGRICULTURE OR HIS OR HER DESIGNEE IDENTIFIES THE SOURCE OR
7 POTENTIAL SOURCES OF THE PROBLEM CAUSED BY THE USE OF OTHER THAN
8 GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES, THE
9 DIRECTOR OF THE MICHIGAN DEPARTMENT OF AGRICULTURE OR HIS OR HER
10 DESIGNEE SHALL ADVISE THE PERSON RESPONSIBLE FOR THE FARM OR FARM
11 OPERATION THAT NECESSARY CHANGES SHOULD BE MADE TO RESOLVE OR
12 ABATE THE PROBLEM AND TO CONFORM WITH GENERALLY ACCEPTED AGRICUL-
13 TURAL AND MANAGEMENT PRACTICES. THE DIRECTOR OF THE MICHIGAN
14 DEPARTMENT OF AGRICULTURE OR HIS OR HER DESIGNEE SHALL DETERMINE
15 IF THOSE CHANGES ARE IMPLEMENTED AND SHALL NOTIFY THE PERSON
16 RESPONSIBLE FOR THE FARM OR FARM OPERATION AND THE COMPLAINANT OF
17 THIS DETERMINATION IN WRITING.

18 (4) THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF AGRICULTURE
19 OR HIS OR HER DESIGNEE SHALL REQUIRE OF THE COMPLAINANT THE PAY-
20 MENT OF THE FULL COST OF INVESTIGATION OF ANY ADDITIONAL COM-
21 PLAINTS BEYOND 3 COMPLAINTS FOR WHICH THE DIRECTOR OF THE
22 MICHIGAN DEPARTMENT OF AGRICULTURE OR HIS OR HER DESIGNEE FOUND
23 THE FARM OR FARM OPERATION TO BE USING GENERALLY ACCEPTED AGRI-
24 CULTURAL AND MANAGEMENT PRACTICES.

25 SEC. 3B. (1) IN ANY NUISANCE ACTION BROUGHT IN WHICH A FARM
26 OR FARM OPERATION IS ALLEGED TO BE A NUISANCE, IF THE DEFENDANT
27 FARM OR FARM OPERATION PREVAILS, THE FARM OR FARM OPERATION MAY

1 RECOVER FROM THE PLAINTIFF THE ACTUAL AMOUNT OF COSTS AND
 2 EXPENSES DETERMINED BY THE COURT TO HAVE BEEN REASONABLY AND
 3 ACTUALLY INCURRED BY THE FARM OR FARM OPERATION IN CONNECTION
 4 WITH THE DEFENSE OF THE ACTION, TOGETHER WITH REASONABLE AND
 5 ACTUAL ATTORNEY FEES.

6 (2) IF THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF AGRICUL-
 7 TURE OR HIS OR HER DESIGNEE ASSISTED IN THE DEFENSE OF THE FARM
 8 OR FARM OPERATION, THE DIRECTOR SHALL RECOVER THE ACTUAL AMOUNT
 9 OF COSTS AND EXPENSES DETERMINED BY THE COURT TO HAVE BEEN REA-
 10 SONABLY INCURRED BY THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF
 11 AGRICULTURE OR HIS OR HER DESIGNEE IN CONNECTION WITH THE DEFENSE
 12 OF SUCH ACTION, TOGETHER WITH A REASONABLE AMOUNT FOR ATTORNEY
 13 FEES.

14 SEC. 3C. (1) RESIDENTIAL REAL PROPERTY IS SUBJECT TO THOSE
 15 DISCLOSURES DESCRIBED IN SECTION 7 OF THE SELLER DISCLOSURE ACT,
 16 ACT NO. 92 OF THE PUBLIC ACTS OF 1993, BEING SECTIONS 565.957 OF
 17 THE MICHIGAN COMPILED LAWS.

18 (2) SUBDIVIDED LAND IS SUBJECT TO THOSE DISCLOSURES
 19 DESCRIBED IN SECTION 8 OF THE LAND SALES ACT, ACT NO. 286 OF THE
 20 PUBLIC ACTS OF 1972, BEING SECTION 565.808 OF THE MICHIGAN
 21 COMPILED LAWS.

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

25 (a) Senate Bill No. _____ or House Bill No. 4301 (request
 26 no. 01970'95).

1 (b) Senate Bill No. _____ or House Bill No. 4299 (request
2 no. 01973'95).