

SENATE BILL No. 1064

February 23, 2006, Introduced by Senators BRATER, JACOBS, THOMAS, LELAND and SCHAUER
and referred to the Committee on Agriculture, Forestry and Tourism.

A bill to amend 1981 PA 93, entitled
"Michigan right to farm act,"
by amending sections 2 and 4 (MCL 286.472 and 286.474), section 2
as amended by 1995 PA 94 and section 4 as amended by 1999 PA 261.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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:

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

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

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

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

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

16 (vi) Use of alternative pest management techniques.

17 (vii) The fencing, feeding, watering, sheltering,
18 transportation, treatment, use, handling and care of farm animals.

19 (viii) The management, storage, transport, utilization, and
20 application of farm by-products, including manure or agricultural
21 wastes.

22 (ix) The conversion from a farm operation activity to other
23 farm operation activities.

24 (x) The employment and use of labor.

25 (c) "Farm product" means those plants and animals useful to
26 human beings produced by agriculture and includes, but is not
27 limited to, forages and sod crops, grains and feed crops, field

1 crops, dairy and dairy products, poultry and poultry products,
2 cervidae, livestock, including breeding and grazing, equine, fish,
3 and other aquacultural products, bees and bee products, berries,
4 herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock,
5 trees and tree products, mushrooms, and other similar products, or
6 any other product which incorporates the use of food, feed, fiber,
7 or fur, as determined by the Michigan commission of agriculture.

8 (d) "Generally accepted agricultural and management practices"
9 means those practices as defined by the Michigan commission of
10 agriculture. The commission shall give due consideration to
11 available Michigan department of agriculture information and
12 written recommendations from the Michigan state university college
13 of agriculture and natural resources extension and the agricultural
14 experiment station in cooperation with the United States department
15 of agriculture natural resources conservation service and the
16 consolidated farm service agency, the Michigan department of
17 natural resources, ~~and other~~ **THE MICHIGAN DEPARTMENT OF**
18 **ENVIRONMENTAL QUALITY, AGRICULTURAL** professional and industry
19 organizations, **AND ANY STATEWIDE ENVIRONMENTAL ORGANIZATIONS.**

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

22 Sec. 4. (1) Subject to subsection (2), the director shall
23 investigate all complaints involving a farm or farm operation,
24 including, but not limited to, complaints involving the use of
25 manure and other nutrients, agricultural waste products, dust,
26 noise, odor, fumes, air pollution, surface water or groundwater
27 pollution, food and agricultural processing by-products, care of

1 farm animals and pest infestations. Within 7 business days ~~of~~
2 **AFTER** receipt of the complaint, the director shall conduct an on-
3 site inspection of the farm or farm operation. The director shall
4 notify, in writing, the city, village, or township and the county
5 in which the farm or farm operation is located of the complaint.

6 (2) The commission and the director shall enter into a
7 memorandum of understanding with the director of the department of
8 environmental quality. The investigation and resolution of
9 environmental complaints concerning farms or farm operations shall
10 be conducted in accordance with the memorandum of understanding.
11 However, the director shall notify the department of environmental
12 quality of any potential violation of the natural resources and
13 environmental protection act, 1994 PA 451, MCL 324.101 to
14 324.90106, or a rule promulgated under that act. Activities at a
15 farm or farm operation are subject to applicable provisions of the
16 natural resources and environmental protection act, 1994 PA 451,
17 MCL 324.101 to 324.90106, and the rules promulgated under that act.
18 The commission and the director shall develop procedures for the
19 investigation and resolution for other farm-related complaints.

20 (3) If the director finds upon investigation under subsection
21 (1) that the person responsible for a farm or farm operation is
22 using generally accepted agricultural and management practices, the
23 director shall notify, in writing, that person, the complainant,
24 and the city, village, or township and the county in which the farm
25 or farm operation is located of this finding. If the director
26 identifies that the source or potential sources of the problem were
27 caused by the use of other than generally accepted agricultural and

1 management practices, the director shall advise the person
2 responsible for the farm or farm operation that necessary changes
3 should be made to resolve or abate the problem and to conform with
4 generally accepted agricultural and management practices and that
5 if those changes cannot be implemented within 30 days, the person
6 responsible for the farm or farm operation shall submit to the
7 director an implementation plan including a schedule for completion
8 of the necessary changes. When the director conducts a follow-up
9 on-site inspection to verify whether those changes have been
10 implemented, the director shall notify, in writing, the city,
11 village, or township and the county in which the farm or farm
12 operation is located of the time and date of the follow-up on-site
13 inspection and shall allow a representative of the city, village,
14 or township and the county to be present during the follow-up on-
15 site inspection. If the changes have been implemented, the director
16 shall notify, in writing, the person responsible for the farm or
17 farm operation, the complainant, and the city, village, or township
18 and the county in which the farm or farm operation is located of
19 this determination. If the changes have not been implemented, the
20 director shall notify, in writing, the complainant and the city,
21 village, or township and the county in which the farm or farm
22 operation is located that the changes have not been implemented and
23 whether a plan for implementation has been submitted. Upon request,
24 the director shall provide a copy of the implementation plan to the
25 city, village, or township and the county in which the farm or farm
26 operation is located. **IF A SECOND OR SUBSEQUENT ON-SITE FOLLOW-UP**
27 **INSPECTION IS NECESSARY, THE FARM OR FARM OPERATION SHALL BE**

1 ASSESSED \$500.00 FOR EACH INSPECTION, PAYABLE TO THE DEPARTMENT FOR
2 DEPOSIT INTO THE GENERAL FUND.

3 (4) A complainant who brings more than 3 unverified complaints
4 against the same farm or farm operation within 3 years may be
5 ordered, by the director, to pay to the department the full costs
6 of investigation of any fourth or subsequent unverified complaint
7 against the same farm or farm operation. As used in this
8 subsection, "unverified complaint" means a complaint in response to
9 which the director determines that the farm or farm operation is
10 using generally accepted agricultural and management practices.

11 (5) Except as provided in subsection (6), this act does not
12 affect the application of state statutes and federal statutes.

13 (6) ~~Beginning June 1, 2000, except~~ **EXCEPT** as otherwise
14 provided in this section, it is the express legislative intent that
15 this act preempt any local ordinance, regulation, or resolution
16 that purports to extend or revise in any manner the provisions of
17 this act or generally accepted agricultural and management
18 practices developed under this act. Except as otherwise provided in
19 this section, a local unit of government shall not enact, maintain,
20 or enforce an ordinance, regulation, or resolution that conflicts
21 in any manner with this act or generally accepted agricultural and
22 management practices developed under this act. **THE PREEMPTION AND**
23 **PROHIBITION ON LOCAL ORDINANCES UNDER THIS SECTION DOES NOT APPLY**
24 **TO SETBACK REQUIREMENTS RELATING TO A NEW OR EXPANDED CAFO. IN**
25 **ADDITION, A GENERALLY ACCEPTED AGRICULTURE AND MANAGEMENT PRACTICE**
26 **FOR A NEW OR EXPANDED CAFO SHALL NOT PROVIDE FOR A SETBACK DISTANCE**
27 **THAT IS SHORTER THAN THE DISTANCE THAT IS PROVIDED IN AN APPLICABLE**

1 **LOCAL ORDINANCE.**

2 (7) A local unit of government may submit to the director a
3 proposed ordinance prescribing standards different from those
4 contained in generally accepted agricultural and management
5 practices if adverse effects on the environment or public health
6 will exist within the local unit of government. A proposed
7 ordinance under this subsection shall not conflict with existing
8 state laws or federal laws. At least 45 days prior to enactment of
9 the proposed ordinance, the local unit of government shall submit a
10 copy of the proposed ordinance to the director. Upon receipt of the
11 proposed ordinance, the director shall hold a public meeting in
12 that local unit of government to review the proposed ordinance. In
13 conducting its review, the director shall consult with the
14 departments of environmental quality and community health and shall
15 consider any recommendations of the county health department of the
16 county where the adverse effects on the environment or public
17 health will allegedly exist. Within 30 days after the public
18 meeting, the director shall make a recommendation to the commission
19 on whether the ordinance should be approved. An ordinance enacted
20 under this subsection shall not be enforced by a local unit of
21 government until approved by the commission of agriculture.

22 (8) By May 1, 2000, the commission shall issue proposed
23 generally accepted agricultural and management practices for site
24 selection and odor controls at new and expanding animal livestock
25 facilities. The commission shall adopt such generally accepted
26 agricultural and management practices by June 1, 2000. In
27 developing these generally accepted agricultural and management

1 practices, the commission shall do both of the following:

2 (a) Establish an advisory committee to provide recommendations
3 to the commission. The advisory committee shall include the
4 entities listed in section 2(d), 2 individuals representing
5 townships, 1 individual representing counties, and 2 individuals
6 representing agricultural industry organizations.

7 (b) For the generally accepted agricultural and management
8 practices for site selection, consider groundwater protection, soil
9 permeability, and other factors determined necessary or appropriate
10 by the commission.

11 (9) If generally accepted agricultural and management
12 practices require the person responsible for the operation of a
13 farm or farm operation to prepare a manure management plan, the
14 person responsible for the operation of the farm or farm operation
15 shall provide a copy of that manure management plan to the city,
16 village, or township or the county in which the farm or farm
17 operation is located, upon request. ~~A manure management plan~~
18 ~~provided under this subsection is exempt from disclosure under the~~
19 ~~freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.~~

20 (10) The department shall do all of the following:

21 (a) Annually submit to the standing committees of the senate
22 and house of representatives with jurisdiction over issues
23 pertaining to agriculture and local government a report on the
24 implementation of this act.

25 (b) Make available on the department's website current
26 generally accepted agricultural and management practices.

27 (c) Establish a toll-free telephone number for receipt of

1 information on noncompliance with generally accepted agricultural
2 and management practices.

3 (11) As used in this section:

4 (a) "Adverse effects on the environment or public health"
5 means any unreasonable risk to human beings or the environment,
6 based on scientific evidence and taking into account the economic,
7 social, and environmental costs and benefits and specific
8 populations whose health may be adversely affected.

9 (b) "Commission" means the commission of agriculture.

10 (c) "Department" means the department of agriculture.

11 (d) "Director" means the director of the department or his or
12 her designee.

13 (E) "CAFO" MEANS THAT TERM AS DEFINED IN R 323.2102(I) OF THE
14 MICHIGAN ADMINISTRATIVE CODE.