

SENATE BILL No. 621

June 27, 2007, Introduced by Senators SCOTT, BASHAM, JACOBS, ANDERSON, BRATER, HUNTER, THOMAS, SWITALSKI, CLARKE and SCHAUER and referred to the Committee on Agriculture.

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:

1 Sec. 2. As used in this act:

2 (A) "ADVERSE EFFECTS ON THE ENVIRONMENT OR PUBLIC HEALTH"
3 MEANS ANY UNREASONABLE RISK TO HUMAN BEINGS OR THE ENVIRONMENT,
4 BASED ON SCIENTIFIC EVIDENCE AND TAKING INTO ACCOUNT THE ECONOMIC,
5 SOCIAL, AND ENVIRONMENTAL COSTS AND BENEFITS AND SPECIFIC
6 POPULATIONS WHOSE HEALTH MAY BE ADVERSELY AFFECTED.

7 (B) "COMMISSION" MEANS THE COMMISSION OF AGRICULTURE.

8 (C) "CONCENTRATED ANIMAL FEEDING OPERATION" OR "CAFO" MEANS

1 THAT TERM AS DEFINED IN R 323.2102(I) OF THE MICHIGAN
2 ADMINISTRATIVE CODE.

3 (D) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

4 (E) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OR HIS OR
5 HER DESIGNEE.

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

10 (G) ~~(b)~~—"Farm operation" means the operation and management of
11 a farm or a condition or activity that occurs at any time as
12 necessary on a farm in connection with the commercial production,
13 harvesting, and storage of farm products, and includes, but is not
14 limited to, **ALL OF THE FOLLOWING:**

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

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

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

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

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

3 (vi) Use of alternative pest management techniques.

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

6 (viii) The management, storage, transport, utilization, and
7 application of farm by-products, including manure or agricultural
8 wastes.

9 (ix) The conversion from a farm operation activity to other
10 farm operation activities.

11 (x) The employment and use of labor.

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

22 (I) ~~(d)~~—"Generally accepted agricultural and management
23 practices" means those practices as defined by the ~~Michigan~~
24 commission of agriculture. The commission shall give due
25 consideration to available ~~Michigan~~ department of agriculture
26 information and written recommendations from the Michigan state
27 university college of agriculture and natural resources extension

1 and the **MICHIGAN STATE UNIVERSITY** agricultural experiment station
2 in cooperation with the United States department of agriculture
3 natural resources conservation service and the consolidated farm
4 service agency, the ~~Michigan~~ department of natural resources, ~~and~~
5 ~~other~~ **THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AGRICULTURAL**
6 professional and industry organizations, **AND ANY STATEWIDE**
7 **ENVIRONMENTAL ORGANIZATIONS.**

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

10 Sec. 4. (1) Subject to subsection (2), the director shall
11 investigate all complaints involving a farm or farm operation,
12 including, but not limited to, complaints involving the use of
13 manure and other nutrients, agricultural waste products, dust,
14 noise, odor, fumes, air pollution, surface water or groundwater
15 pollution, food and agricultural processing by-products, care of
16 farm animals and pest infestations. Within 7 business days ~~of~~ **AFTER**
17 receipt of the complaint, the director shall conduct an on-site
18 inspection of the farm or farm operation. The director shall
19 notify, in writing, the city, village, or township and the county
20 in which the farm or farm operation is located of the complaint.

21 (2) The commission and the director shall enter into a
22 memorandum of understanding with the director of the department of
23 environmental quality. The investigation and resolution of
24 environmental complaints concerning farms or farm operations shall
25 be conducted in accordance with the memorandum of understanding.
26 However, the director shall notify the department of environmental
27 quality of any potential violation of the natural resources and

1 environmental protection act, 1994 PA 451, MCL 324.101 to
2 324.90106, or a rule promulgated under that act. Activities at a
3 farm or farm operation are subject to applicable provisions of the
4 natural resources and environmental protection act, 1994 PA 451,
5 MCL 324.101 to 324.90106, and the rules promulgated under that act.
6 The commission and the director shall develop procedures for the
7 investigation and resolution for other farm-related complaints.

8 (3) If the director finds upon investigation under subsection
9 (1) that the person responsible for a farm or farm operation is
10 using generally accepted agricultural and management practices, the
11 director shall notify, in writing, that person, the complainant,
12 and the city, village, or township and the county in which the farm
13 or farm operation is located of this finding. If the director
14 identifies that the source or potential sources of the problem were
15 caused by the use of other than generally accepted agricultural and
16 management practices, the director shall advise the person
17 responsible for the farm or farm operation that necessary changes
18 should be made to resolve or abate the problem and to conform with
19 generally accepted agricultural and management practices and that
20 if those changes cannot be implemented within 30 days, the person
21 responsible for the farm or farm operation shall submit to the
22 director an implementation plan including a schedule for completion
23 of the necessary changes. When the director conducts a follow-up
24 on-site inspection to verify whether those changes have been
25 implemented, the director shall notify, in writing, the city,
26 village, or township and the county in which the farm or farm
27 operation is located of the time and date of the follow-up on-site

1 inspection and shall allow a representative of the city, village,
2 or township and the county to be present during the follow-up on-
3 site inspection. If the changes have been implemented, the director
4 shall notify, in writing, the person responsible for the farm or
5 farm operation, the complainant, and the city, village, or township
6 and the county in which the farm or farm operation is located of
7 this determination. If the changes have not been implemented, the
8 director shall notify, in writing, the complainant and the city,
9 village, or township and the county in which the farm or farm
10 operation is located that the changes have not been implemented and
11 whether a plan for implementation has been submitted. Upon request,
12 the director shall provide a copy of the implementation plan to the
13 city, village, or township and the county in which the farm or farm
14 operation is located. **IF A SECOND OR SUBSEQUENT ON-SITE FOLLOW-UP**
15 **INSPECTION IS NECESSARY, THE FARM OR FARM OPERATION SHALL BE**
16 **ASSESSED \$500.00 FOR EACH INSPECTION. MONEY COLLECTED BY THE**
17 **DEPARTMENT UNDER THIS SUBSECTION SHALL BE FORWARDED TO THE STATE**
18 **TREASURER AND CREDITED TO THE GENERAL FUND.**

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

27 (5) Except as provided in subsection (6), this act does not

1 affect the application of state statutes and federal statutes.

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

19 (7) A local unit of government may submit to the director a
20 proposed ordinance prescribing standards different from those
21 contained in generally accepted agricultural and management
22 practices if adverse effects on the environment or public health
23 will exist within the local unit of government. A proposed
24 ordinance under this subsection shall not conflict with existing
25 state laws or federal laws. At least 45 days prior to enactment of
26 the proposed ordinance, the local unit of government shall submit a
27 copy of the proposed ordinance to the director. Upon receipt of the

1 proposed ordinance, the director shall hold a public meeting in
2 that local unit of government to review the proposed ordinance. In
3 conducting its review, the director shall consult with the
4 departments of environmental quality and community health and shall
5 consider any recommendations of the county health department of the
6 county where the adverse effects on the environment or public
7 health will allegedly exist. Within 30 days after the public
8 meeting, the director shall make a recommendation to the commission
9 on whether the ordinance should be approved. An ordinance enacted
10 under this subsection shall not be enforced by a local unit of
11 government until approved by the commission of agriculture.

12 ~~—— (8) By May 1, 2000, the commission shall issue proposed~~
13 ~~generally accepted agricultural and management practices for site~~
14 ~~selection and odor controls at new and expanding animal livestock~~
15 ~~facilities. The commission shall adopt such generally accepted~~
16 ~~agricultural and management practices by June 1, 2000. In~~
17 ~~developing these generally accepted agricultural and management~~
18 ~~practices, the commission shall do both of the following:~~

19 ~~—— (a) Establish an advisory committee to provide recommendations~~
20 ~~to the commission. The advisory committee shall include the~~
21 ~~entities listed in section 2(d), 2 individuals representing~~
22 ~~townships, 1 individual representing counties, and 2 individuals~~
23 ~~representing agricultural industry organizations.~~

24 ~~—— (b) For the generally accepted agricultural and management~~
25 ~~practices for site selection, consider groundwater protection, soil~~
26 ~~permeability, and other factors determined necessary or appropriate~~
27 ~~by the commission.~~

1 (8) ~~(9)~~ If generally accepted agricultural and management
 2 practices require the person responsible for the operation of a
 3 farm or farm operation to prepare a manure management plan, the
 4 person responsible for the operation of the farm or farm operation
 5 shall provide a copy of that manure management plan to the city,
 6 village, or township or the county in which the farm or farm
 7 operation is located, upon request. ~~A manure management plan~~
 8 ~~provided under this subsection is exempt from disclosure under the~~
 9 ~~freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.~~

10 (9) ~~(10)~~ The department shall do all of the following:

11 (a) Annually submit to the standing committees of the senate
 12 and house of representatives with jurisdiction over issues
 13 pertaining to agriculture and local government a report on the
 14 implementation of this act.

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

17 (c) Establish a toll-free telephone number for receipt of
 18 information on noncompliance with generally accepted agricultural
 19 and management practices.

20 ~~—— (11) As used in this section:~~

21 ~~—— (a) "Adverse effects on the environment or public health"~~
 22 ~~means any unreasonable risk to human beings or the environment,~~
 23 ~~based on scientific evidence and taking into account the economic,~~
 24 ~~social, and environmental costs and benefits and specific~~
 25 ~~populations whose health may be adversely affected.~~

26 ~~—— (b) "Commission" means the commission of agriculture.~~

27 ~~—— (c) "Department" means the department of agriculture.~~

1 ~~_____ (d) "Director" means the director of the department or his or~~
2 ~~her designee.~~