

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2596

H.P. 1861

House of Representatives, March 1, 2000

An Act to Revise the Law Protecting Farmers' Right to Farm.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative PIEH of Bremen. (GOVERNOR'S BILL)

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 17 MRSA §2805, sub-§1**, as amended by PL 1993, c. 87,
4 §1, is further amended to read:

6 **1. Definitions.** As used in this section, unless the
7 context otherwise indicates, the following terms have the
8 following meanings.

10 A. "Farm" means the land, buildings and machinery used in
11 the commercial production of farm products.

12 B. "Farm operation" means a condition or activity that
13 occurs on a farm in connection with the commercial
14 production of farm products and includes, but is not limited to,
15 operations giving rise to noise, odors, dust, insects,
16 fumes, operation of machinery and irrigation pumps, ground
17 and aerial seeding, ground spraying, composting of material
18 produced by the farm or to be used at least in part on the
19 farm, disposal of manure, the application of chemical
20 fertilizers, soil amendments, conditioners and pesticides
21 and the employment and use of labor.

22 C. "Farm product" means those plants and animals useful to
23 ~~man~~ humans and includes, but is not limited to, forages and
24 sod crops, grains and food crops, dairy products, poultry
25 and poultry products, bees, livestock and livestock products
26 and fruits, berries, vegetables, flowers, seeds, grasses and
27 other similar products.

28
29 **Sec. 2. 17 MRSA §2805, sub-§3**, as enacted by PL 1981, c. 472,
30 is amended to read:

31 **3. Change in land use.** A farm or farm operation shall ~~may~~
32 not be considered a public or private nuisance if the farm or
33 farm operation existed before a change in the land use or
34 occupancy of land within one mile of the boundaries of the farm
35 and, as long as, before the change in land use or occupancy of
36 land, the farm or farm operation would not have been a nuisance.
37 This subsection does not apply to a farm or farm operation that
38 materially changes the conditions or nature of the farm operation
39 after a change in the land use or occupancy of land within one
40 mile of the boundaries of the farm. Nothing in this subsection
41 affects the applicability of any of the other provisions of this
42 section.

43 **Sec. 3. 17 MRSA §2805, sub-§5-A** is enacted to read:

44 **5-A. Good faith.** The Maine Rules of Civil Procedure, Rule
45 11 applies in any private action filed against the owner or

operator of a farm or farm operation in which it is alleged that
the farm or farm operation constitutes a nuisance, if it is
determined that the action was not brought in good faith and was
frivolous or intended for harassment only.

Sec. 4. 17 MRSA §2805, sub-§6, as amended by PL 1993, c. 124,
§4, is further amended to read:

6. Failure to adopt best management practices. If the
person responsible for the farm or farm operation does not ade~~p~~t
apply best management practices as required by the Commissioner
of Agriculture, Food and Rural Resources, the commissioner shall
send a written report to an appropriate agency if a federal or
state law has been violated and to the Attorney General. The
Attorney General may institute an action to abate a nuisance or
to enforce the provisions of this section or any other applicable
state law, and the court may order the abatement with costs as
provided under section 2702 and such injunctive relief as
provided in this section or by other applicable law. Failure to
apply best management practices in accordance with this section
constitutes a separate civil violation for which a forfeiture of
up to \$1,000, together with an additional forfeiture of up to
\$250 per day for every day that the violation continues, may be
adjudged.

Sec. 5. 17 MRSA §2805, sub-§9 is enacted to read:

9. Educational outreach. The Commissioner of Agriculture,
Food and Rural Resources shall conduct an educational outreach
program for the agricultural community to increase awareness of
the provisions of this section and the currently adopted best
management practices of the Department of Agriculture, Food and
Rural Resources. The commissioner shall inform the public about
the provisions of this section, the complaint resolution process
adopted by the department and state policy with respect to
preservation and protection of agricultural and natural resources.

SUMMARY

This bill accomplishes the following.

Current law provides that a farm operation may not be
considered a nuisance if the farm operation predates a change in
land use or occupancy within one mile of its borders, or if the
farm operation conforms to best management practices. This bill
clarifies that a farm operation that predates a land use or
occupancy change within one mile of its borders and makes a
material change to its farm operation after the land use change

2 or does not apply best management practices will not receive the
protections of that law.

4 It provides that attorney's fees may be awarded to the
defendant in a nuisance lawsuit involving a complaint against a
6 farm operation if that action was not brought in good faith.

8 It clarifies that failure to apply best management practices
may result in an enforcement action. It also provides for
10 penalties for failure to apply best management practices as
required by the Commissioner of Agriculture, Food and Rural
12 Resources.

14 It requires the commissioner to conduct an educational
outreach program to increase awareness of the provisions of the
16 Maine Revised Statutes, Title 17, section 2805 and the
department's best management practices.