

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1025 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Joel E. Gougeon
Committee: Farming, Agribusiness and Food Systems

Date Completed: 8-28-98

RATIONALE

Agriculture is a leading industry in Michigan, making the State a major contributor to America's market basket. A significant component of the agricultural business is the processing of raw agricultural commodities into food products. Food processors operating in the State range in size from large companies, such as the Kellogg Company in Battle Creek which produces cereal for national and international distribution, to small individually owned operations, such as a cider mill where an owner grows the apples and processes them into cider that is sold to local customers. While some processors are located in urban areas near major transportation routes, many are situated in rural settings that are close to where the raw materials are grown. Today, the rural landscape is undergoing a transition as many urban and suburban dwellers move to the country. Apparently, there is concern in the agricultural community that animosity may develop between food processors and urban dwellers who migrate to rural areas, much like the disputes that have arisen between farmers and their new neighbors. The Right to Farm Act was designed to protect farming operations from nuisance lawsuits brought by persons who object to the noise, odors, and dust that accompany typical farming activities. Some people believe that fruit, vegetable, grain, and dairy processors should be given similar protection. (The term "nuisance" is explained in **BACKGROUND**, below.)

CONTENT

The bill would create the "Michigan Food Processing Act" to provide that a fruit, vegetable, dairy product, and grain processing operation could not be found to be a public or private nuisance if it conformed to "generally accepted fruit, vegetable, dairy product, and grain processing practices" or met other

specified conditions. The bill also would provide for the Department of Agriculture to investigate all nuisance complaints; permit the Agriculture Director to order a complainant who brought more than three unverified complaints within three years against the same operation to pay the costs for investigating a subsequent complaint; and, permit a defendant processing plant that prevailed in a nuisance action to recover from the plaintiff court costs and attorney fees. In addition, the bill specifies that it would not affect the application of State and Federal statutes, including but not limited to the County Zoning Act, the Township Zoning Act, the City and Village Zoning Act, and the Natural Resources and Environmental Protection Act.

Processing Operations

A processing operation (the operation and management of a business engaged in processing) could not be found to be a public or private nuisance if the operation conformed to generally accepted fruit, vegetable, dairy product, and grain processing practices as determined by the Michigan Agriculture Commission. The Commission annually would have to review and revise, as determined necessary, the generally accepted fruit, vegetable, dairy product, and grain processing practices.

A processing operation that conformed with this provision could not be found to be a public or private nuisance as a result of any of the following: a change in ownership or size; temporary cessation or interruption of processing; adoption of new technology; or a change in the type of fruit, vegetable, dairy, or grain product being processed.

In addition, a processing operation could not be found to be a public or private nuisance if the

operation existed before a change in the use or occupancy of land within one mile of the boundaries of the land upon which the processing operation was located and if, before that change in use or occupancy of land, the processing operation would not have been found to be a nuisance.

("Generally accepted fruit, vegetable, dairy product, and grain processing practices" would mean those practices as defined by the Agriculture Commission. The Commission would have to give due consideration to available Agriculture Department 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 U.S. Department of Agriculture, the State Department of Environmental Quality, and other professional and industry organizations.

"Processing" would mean the commercial processing or handling of fruit, vegetable, dairy, and grain products for human food consumption and animal feed including, but not limited to, the following: the generation of noise, odors, waste water, dust, fumes, and other associated conditions; the operation of machinery and equipment necessary for a processing operation including, but not limited to, irrigation and drainage systems and pumps and the movement of vehicles, machinery, equipment, and fruit and vegetable products, dairy products, and grain products and associated inputs necessary for fruit and vegetable products, dairy and grain, food, or feed processing operations on the roadway as authorized by the Michigan Vehicle Code; the management, storage, transport, utilization, and application of fruit, vegetable, dairy products, and grain processing by-products consistent with generally accepted agricultural and management practices as established under the Michigan Right to Farm Act; the conversion from one processing operation activity to another processing operation activity; or, the employment and use of labor engaged in a processing operation.

A complainant who brought more than three unverified nuisance complaints against the same processing operation within three years could be

"Dairy product" would mean a dairy product and milk product as defined in the Manufacturing Milk Act, and ice cream, French ice cream, variegated ice cream, ice milk, sherbet, and frozen desserts as defined in the Frozen Desserts Act. "Grain" would mean dry edible beans, soy beans, small grains, cereal grains, corn, grass seeds, hay, and legume seeds in a raw or natural state. "Fruit and vegetable product" would mean those plant items used by human beings for human consumption including, but not limited to, field crops, root crops, berries, herbs, fruits, vegetables, flowers, seeds, grasses, tree products, mushrooms, and other similar products, or any other fruit and vegetable product processed for human consumption as determined by the Agriculture Commission.)

Investigating Complaints

The Agriculture Commission would have to request the Director of the Department of Agriculture or his or her designee to investigate all nuisance complaints under the bill involving a processing operation. The Commission and Director could enter into a memorandum of understanding with the Department of Environmental Quality. The investigation and resolution of nuisance complaints would have to be conducted pursuant to this memorandum.

If the Director of the Agriculture Department, or his or her designee, found upon investigation that the person responsible for the processing operation was using generally accepted fruit, vegetable, dairy product, and grain processing practices, the Director or designee would have to give written notice of this finding to that person and the complainant. If the Director or designee identified the source or potential sources of the problem caused by the use of other than generally accepted fruit, vegetable, dairy product, and grain processing practices, the Director or designee would have to advise the person responsible for the processing operation that necessary changes should be made to resolve or abate the problem and to conform with generally accepted fruit, vegetable, dairy product, and grain processing practices. The Director or designee would have to determine if those changes were implemented and would have to give the responsible person and the complainant written notice of this determination.

ordered by the Director to pay the Agriculture Department the full costs of investigating any fourth or subsequent unverified nuisance complaint

against the same processing operation. (“Unverified nuisance complaint” would mean a nuisance complaint in which the Agriculture Director or the Director’s designee determined that the processing operation was using generally accepted fruit, vegetable, dairy product, and grain processing practices.)

Nuisance Action Costs

In any nuisance action in which a processing operation was alleged to be a nuisance, if the defendant operation prevailed, the operation could recover from the plaintiff the actual amount of costs and expenses determined by the court to have been reasonably incurred by the operation in connection with the defense of the action, together with reasonable and actual attorney fees.

BACKGROUND

The term “nuisance” has numerous definitions, which vary depending upon the type of nuisance involved. In general, the term refers to conduct that endangers or inconveniences the public, or interferes with the property or personal rights of individuals. According to *Black’s Law Dictionary*, Fifth Edition, one definition of “nuisance” is, “that which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him”. Another definition is, “that activity which arises from unreasonable, unwarranted or unlawful use by a person of his own property, working obstruction or injury to right of another, or to the public, and producing such material annoyance, inconvenience and discomfort that law will presume resulting damage”. The term also has been defined as, “an offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance, especially of a continuing or repeated invasion or disturbance of another’s right, or anything that works a hurt, inconvenience or damage”.

Among the different types of nuisances are public and private nuisances. A public nuisance, according to *Black’s*, is one that affects an indefinite number of persons, all the residents of a particular locality, or all people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. A private nuisance is an invasion of a person’s interest in the private use and enjoyment of land by any type of liability-forming conduct. The same thing or act may constitute both a public and a private nuisance; the distinction is the injury to the community at large or

to a single individual.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Right to Farm Act was designed to protect farming operations from nuisance lawsuits brought against farmers by new rural residents who are not used to the noise, odors, and other associated conditions that accompany typical farming activities. The Act apparently has reduced the number of frivolous lawsuits brought against persons who engage in legitimate farming activities and who follow “generally accepted agricultural and management practices”. The bill would establish a similar mechanism to define “generally accepted fruit, vegetable, dairy product, and grain processing practices” and to protect processors from being sued as a public or private nuisance if they followed these practices. The bill, however, would not absolve processing plants of having to adhere to current water and air quality regulations established by the Department of Environmental Quality. In fact, the bill would create a forum for various agricultural and environmental agencies to develop and review processing practices that would keep processors up-to-date on any technological breakthroughs that would reduce problems caused by processing. The future of Michigan agriculture depends in part on keeping processors that currently operate in the State as well as attracting new processing enterprises to the State. With the migration of urban dwellers to rural areas and the potential for controversy surrounding agricultural processing operations, methods are needed to avoid or resolve these disputes and address environmental concerns while not injuring the economic interests of the agriculture industry.

Opposing Argument

The proposed “generally accepted fruit, vegetable, dairy product, and grain processing practices” would be determined by the Michigan Agriculture Commission with consideration given to information and recommendations from various agricultural and environmental agencies and organizations. There is concern, however, that these practices could conflict with other environmental statutes. Furthermore, the bill would not require processors to comply with other agricultural or environmental statutes, as well as the generally accepted processing practices, in order to be immune from nuisance lawsuits. The bill also would unfairly

grant processors the right to recover their costs in successfully defending themselves against nuisance lawsuits without providing similar guarantees to plaintiffs who successfully proved that a processing operation had not adhered to the generally accepted practices and was environmentally unsafe. The bill would go too far to protect processors' interests while ignoring the rights of others to be safe from potentially hazardous effects of some processing activities.

Response: In regard to the environmental concerns, the bill states that it would not affect the application of other State and Federal laws, including the Natural Resources and Environmental Protection Act.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate fiscal impact, depending upon the agreed-upon role of the Department of Agriculture and the number of nuisance complaints against food processors.

The Department of Environmental Quality (DEQ) is the lead agency on State environmental issues. The Department of Agriculture and the DEQ have a memorandum of understanding on how agricultural nuisance complaints are handled with food production activities. This bill would expand agricultural nuisance protection to food processors, but also specifies that it would not affect the application of State statutes. To clarify the amount of additional activity required by the Department of Agriculture, compared with current DEQ regulatory actions, a similar memorandum of understanding would need to be developed pertaining to food processors.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.