

SUBSTITUTE FOR
SENATE BILL NO. 1025

A bill to define certain fruit, vegetable, dairy product, and grain processing uses and practices; to provide for circumstances under which a processing operation is not considered to be a public or private nuisance; to provide for certain powers and duties for certain state agencies and departments; and to provide for certain remedies for certain persons.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan agricultural processing act".

3 Sec. 2. As used in this act:

4 (a) "Dairy product" means all of the following:

5 (i) Dairy product and milk product as those terms are
6 defined in section 1 of the manufacturing milk act, 1913 PA 222,
7 MCL 288.101.

SB 1025, As Passed Senate, May 28, 1998

Senate Bill No. 1025

2

1 (ii) Ice cream, French ice cream, variegated ice cream, ice
2 milk, sherbet, and frozen desserts as those terms are defined in
3 section 2 of the frozen desserts act of 1968, 1968 PA 298, MCL
4 288.322.

5 (b) "Fruit and vegetable product" means those plant items
6 used by human beings for human food consumption including, but
7 not limited to, field crops, root crops, berries, herbs, fruits,
8 vegetables, flowers, seeds, grasses, tree products, mushrooms,
9 and other similar products, or any other fruit and vegetable pro-
10 duct processed for human consumption as determined by the
11 Michigan commission of agriculture.

12 (c) "Generally accepted fruit, vegetable, dairy product, and
13 grain processing practices" means those practices as defined by
14 the Michigan commission of agriculture. The Michigan commission
15 of agriculture shall give due consideration to available Michigan
16 department of agriculture information and written recommendations
17 from the Michigan state university college of agriculture and
18 natural resources extension and the agricultural experiment sta-
19 tion in cooperation with the United States department of agricul-
20 ture, the United States food and drug administration, the
21 Michigan department of environmental quality, and other profes-
22 sional and industry organizations.

23 (d) "Grain" means dry edible beans, soy beans, small grains,
24 cereal grains, corn, grass seeds, hay, and legume seeds in a raw
25 or natural state.

26 (e) "Person" means an individual, corporation, partnership,
27 association, limited liability company, or other legal entity.

SB 1025, As Passed Senate, May 28, 1998

Senate Bill No. 1025

3

1 (f) "Processing" means the commercial processing or handling
2 of fruit, vegetable, dairy, and grain products for human food
3 consumption and animal feed including, but not limited to, the
4 following:

5 (i) The generation of noise, odors, waste water, dust,
6 fumes, and other associated conditions.

7 (ii) The operation of machinery and equipment necessary for
8 a processing operation including, but not limited to, irrigation
9 and drainage systems and pumps and the movement of vehicles,
10 machinery, equipment, and fruit and vegetable products, dairy
11 products, and grain products and associated inputs necessary for
12 fruit and vegetable, dairy, and grain, food, or feed processing
13 operations on the roadway as authorized by the Michigan vehicle
14 code, 1949 PA 300, MCL 257.1 to 257.923.

15 (iii) The management, storage, transport, utilization, and
16 land application of fruit, vegetable, dairy product, and grain
17 processing by-products consistent with generally accepted agri-
18 cultural and management practices as established under the
19 Michigan right to farm act, 1981 PA 93, MCL 286.471 to 286.474.

20 (iv) The conversion from 1 processing operation activity to
21 another processing operation activity.

22 (v) The employment and use of labor engaged in a processing
23 operation.

24 (g) "Processing operation" means the operation and manage-
25 ment of a business engaged in processing.

26 Sec. 3. (1) A processing operation shall not be found to be
27 a public or private nuisance if the processing operation alleged

SB 1025, As Passed Senate, May 28, 1998

Senate Bill No. 1025

4

1 to be a nuisance conforms to generally accepted fruit, vegetable,
2 dairy product, and grain processing practices as determined by
3 the Michigan commission of agriculture. The Michigan commission
4 of agriculture shall annually review and revise, as determined
5 necessary, the generally accepted fruit, vegetable, dairy pro-
6 duct, and grain processing practices.

7 (2) A processing operation shall not be found to be a public
8 or private nuisance if the processing operation existed before a
9 change in the use or occupancy of land within 1 mile of the
10 boundaries of the land upon which the processing operation is
11 located and if, before that change in use or occupancy of land,
12 the processing operation would not have been found to be a
13 nuisance.

14 (3) A processing operation that is in conformance with sub-
15 section (1) shall not be found to be a public or private nuisance
16 as a result of any of the following:

17 (a) A change in ownership or size.

18 (b) Temporary cessation or interruption of processing.

19 (c) Adoption of new technology.

20 (d) A change in type of fruit, vegetable, dairy, or grain
21 product being processed.

22 Sec. 4. (1) The Michigan commission of agriculture shall
23 request the director of the Michigan department of agriculture or
24 his or her designee to investigate all nuisance complaints under
25 this act involving a processing operation.

26 (2) The Michigan commission of agriculture and the director
27 of the Michigan department of agriculture may enter into a

SB 1025, As Passed Senate, May 28, 1998

Senate Bill No. 1025

5

1 memorandum of understanding with the Michigan department of
2 environmental quality. The investigation and resolution of nui-
3 sance complaints shall be conducted pursuant to the memorandum of
4 understanding.

5 (3) If the director of the Michigan department of agricul-
6 ture or his or her designee finds upon investigation that the
7 person responsible for the processing operation is using gener-
8 ally accepted fruit, vegetable, dairy product, and grain process-
9 ing practices, the director of the Michigan department of agri-
10 culture or his or her designee shall notify that person and the
11 complainant of this finding in writing. If the director of the
12 Michigan department of agriculture or his or her designee identi-
13 fies the source or potential sources of the problem caused by the
14 use of other than generally accepted fruit, vegetable, dairy pro-
15 duct, and grain processing practices, the director of the
16 Michigan department of agriculture or his or her designee shall
17 advise the person responsible for the processing operation that
18 necessary changes should be made to resolve or abate the problem
19 and to conform with generally accepted fruit, vegetable, dairy
20 product, and grain processing practices. The director of the
21 Michigan department of agriculture or his or her designee shall
22 determine if those changes are implemented and shall notify the
23 person responsible for the processing operation and the complain-
24 ant of this determination in writing.

25 (4) A complainant who brings more than 3 unverified nuisance
26 complaints against the same processing operation within 3 years
27 may be ordered by the director of the Michigan department of

SB 1025, As Passed Senate, May 28, 1998

Senate Bill No. 1025

6

1 agriculture to pay to the Michigan department of agriculture the
2 full costs of investigation of any fourth or subsequent unveri-
3 fied nuisance complaint against the same processing operation.
4 As used in this subsection, "unverified nuisance complaint" means
5 a nuisance complaint in which the director of the department of
6 agriculture or his or her designee determines that the processing
7 operation is using generally accepted fruit, vegetable, dairy
8 product, and grain processing practices.

9 Sec. 5. In any nuisance action brought in which a process-
10 ing operation is alleged to be a nuisance, if the defendant pro-
11 cessing operation prevails, the processing operation may recover
12 from the plaintiff the actual amount of costs and expenses deter-
13 mined by the court to have been reasonably incurred by the pro-
14 cessing operation in connection with the defense of the action,
15 together with reasonable and actual attorney fees.

16 Sec. 6. (1) This act does not affect the application of
17 state statutes and federal statutes.

18 (2) For purposes of this section, "state statutes" includes,
19 but is not limited to, any of the following:

20 (a) The county zoning act, 1943 PA 183, MCL 125.201 to
21 125.240.

22 (b) The township zoning act, 1943 PA 184, MCL 125.271 to
23 125.310.

24 (c) The city and village zoning act, 1921 PA 207, MCL
25 125.581 to 125.600.

26 (d) The natural resources and environmental protection act,
27 1994 PA 451, MCL 324.101 to 324.90106.