

**SENATE BILL NO. 1025**

March 19, 1998, Introduced by Senators GOUGEON, MC MANUS, SCHUETTE, SCHWARZ, EMMONS, NORTH, CISKY, KOIVISTO, STILLE and GAST and referred to the Committee on Farming, Agribusiness and Food Systems.

A bill to define certain fruit and vegetable processing uses and practices; to provide certain disclosures; 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 food processing act".

3       Sec. 2. As used in this act:

4       (a) "Fruit and vegetable product" means those plant items  
5 used by human beings for human consumption including, but not  
6 limited to, grains, field crops, root crops, berries, herbs,  
7 fruits, vegetables, flowers, seeds, grasses, tree products,  
8 mushrooms, and other similar products, or any other fruit and

1 vegetable product processed for human consumption as determined  
2 by the Michigan commission of agriculture.

3       (b) "Generally accepted fruit and vegetable processing  
4 practices" means those practices as defined by the Michigan com-  
5 mission of agriculture. The Michigan commission of agriculture  
6 shall give due consideration to available Michigan department of  
7 agriculture information and written recommendations from the  
8 Michigan state university college of agriculture and natural  
9 resources extension and the agricultural experiment station in  
10 cooperation with the United States department of agriculture, the  
11 Michigan department of environmental quality, and other profes-  
12 sional and industry organizations.

13       (c) "Person" means an individual, corporation, partnership,  
14 association, limited liability company, or other legal entity.

15       (d) "Processing" means the commercial processing or handling  
16 of fruit and vegetable products for human consumption including,  
17 but not limited to, the following:

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

20       (ii) The operation of machinery and equipment necessary for  
21 a processing operation including, but not limited to, irrigation  
22 and drainage systems and pumps and the movement of vehicles,  
23 machinery, equipment, and fruit and vegetable products and asso-  
24 ciated inputs necessary for fruit and vegetable operations on the  
25 roadway as authorized by the Michigan vehicle code, 1949 PA 300,  
26 MCL 257.1 to 257.923.

1       (iii) The management, storage, transport, utilization, and  
2 application of fruit and vegetable processing by-products.

3       (iv) The conversion from 1 processing operation activity to  
4 another processing operation activity.

5       (v) The employment and use of labor engaged in a processing  
6 operation.

7       (e) "Processing operation" means the operation and manage-  
8 ment of a business engaged in processing.

9       Sec. 3. (1) A processing operation shall not be found to be  
10 a public or private nuisance if the processing operation alleged  
11 to be a nuisance conforms to generally accepted fruit and vegeta-  
12 ble processing practices as determined by the Michigan commission  
13 of agriculture. Generally accepted fruit and vegetable process-  
14 ing practices shall be reviewed annually by the Michigan commis-  
15 sion of agriculture and revised as determined necessary.

16       (2) A processing operation shall not be found to be a public  
17 or private nuisance if the processing operation existed before a  
18 change in the use or occupancy of land within 1 mile of the  
19 boundaries of the land upon which the processing operation is  
20 located and if, before that change in use or occupancy of land,  
21 the processing operation would not have been found to be a  
22 nuisance.

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

26       (a) A change in ownership or size.

1 (b) Temporary cessation or interruption of processing.

2 (c) Adoption of new technology.

3 (d) A change in type of fruit and vegetable product being  
4 processed.

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

9 (2) The Michigan commission of agriculture and the director  
10 of the Michigan department of agriculture may enter into a memo-  
11 randum of understanding with the Michigan department of environ-  
12 mental quality. The investigation and resolution of nuisance  
13 complaints shall be conducted pursuant to the memorandum of  
14 understanding.

15 (3) If the director of the Michigan department of agricul-  
16 ture or his or her designee finds upon investigation that the  
17 person responsible for the processing operation is using gener-  
18 ally accepted fruit and vegetable processing practices, the  
19 director of the Michigan department of agriculture or his or her  
20 designee shall notify that person and the complainant of this  
21 finding in writing. If the director of the Michigan department  
22 of agriculture or his or her designee identifies the source or  
23 potential sources of the problem caused by the use of other than  
24 generally accepted fruit and vegetable processing practices, the  
25 director of the Michigan department of agriculture or his or her  
26 designee shall advise the person responsible for the processing  
27 operation that necessary changes should be made to resolve or

1 abate the problem and to conform with generally accepted fruit  
2 and vegetable processing practices. The director of the Michigan  
3 department of agriculture or his or her designee shall determine  
4 if those changes are implemented and shall notify the person  
5 responsible for the processing operation and the complainant of  
6 this determination in writing.

7 (4) A complainant who brings more than 3 unverified nuisance  
8 complaints against the same processing operation within 3 years  
9 may be ordered by the director of the Michigan department of  
10 agriculture to pay to the Michigan department of agriculture the  
11 full costs of investigation of any fourth or subsequent unveri-  
12 fied nuisance complaint against the same processing operation.  
13 As used in this subsection, "unverified nuisance complaint" means  
14 a nuisance complaint in which the director of the department of  
15 agriculture or his or her designee determines that the processing  
16 operation is using generally accepted fruit and vegetable pro-  
17 cessing practices.

18 Sec. 5. In any nuisance action brought in which a process-  
19 ing operation is alleged to be a nuisance, if the defendant pro-  
20 cessing operation prevails, the processing operation may recover  
21 from the plaintiff the actual amount of costs and expenses deter-  
22 mined by the court to have been reasonably incurred by the pro-  
23 cessing operation in connection with the defense of the action,  
24 together with reasonable and actual attorney fees.

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

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

3 (a) The county zoning act, 1943 PA 183, MCL 125.201 to  
4 125.240.

5 (b) The township zoning act, 1943 PA 184, MCL 125.271 to  
6 125.310.

7 (c) 1921 PA 207, MCL 125.581 to 125.600.