

Act No. 282
Public Acts of 2005
Approved by the Governor
December 19, 2005
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December 19, 2005
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005

Introduced by Senators Van Woerkom, Sanborn, Gilbert, Toy, Allen, Jelinek, Stamas, Kuipers, Sikkema, Hammerstrom, McManus, Garcia, Birkholz, Hardiman, Goschka and Barcia

ENROLLED SENATE BILL No. 668

AN ACT to amend 1998 PA 381, entitled "An act 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," by amending the title and sections 2 and 3 (MCL 289.822 and 289.823).

The People of the State of Michigan enact:

TITLE

An act to define certain fruit, vegetable, dairy product, meat, 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.

Sec. 2. As used in this act:

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

(i) Dairy product as that term is defined in section 12 of the manufacturing milk law of 2001, 2001 PA 267, MCL 288.572.

(ii) Milk product as that term is defined in section 4 of the grade A milk law of 2001, 2001 PA 266, MCL 288.474.

(b) "Fruit and vegetable product" means those plant items used by human beings for human food 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 Michigan commission of agriculture.

(c) "Generally accepted fruit, vegetable, dairy product, meat, and grain processing practices" means those practices as defined by the Michigan commission of agriculture. The Michigan commission of agriculture shall give due consideration to available Michigan department of agriculture 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 United States department of agriculture, the United States food and drug administration, the Michigan department of environmental quality, and other professional and industry organizations.

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

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

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

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

(ii) 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, meat, and grain products and associated inputs necessary for fruit and vegetable, dairy, and grain, food, meat, or feed processing operations on the roadway as authorized by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

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

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

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

(g) "Processing operation" means the operation and management of a business engaged in processing.

Sec. 3. (1) A processing operation shall not be found to be a public or private nuisance if the processing operation alleged to be a nuisance conforms to generally accepted fruit, vegetable, dairy product, meat, and grain processing practices as determined by the Michigan commission of agriculture. The Michigan commission of agriculture shall annually review and revise, as determined necessary, the generally accepted fruit, vegetable, dairy product, meat, and grain processing practices.

(2) Until the Michigan commission of agriculture establishes the generally accepted fruit, vegetable, dairy product, meat, and grain processing practices, a processing operation shall not be found to be a public or private nuisance in an action brought in a court of competent jurisdiction if the director of the department of agriculture has determined that the processing operation is in compliance with this act as described in section 4(3).

(3) A processing operation shall not be found to be a public or private nuisance if the processing operation existed before a change in the use or occupancy of land within 1 mile of the boundaries of the land upon which the processing operation is located and, before that change in use or occupancy of land, the processing operation would not have been found to be a nuisance. The determination of the circumstances described in this subsection or subsection (1) or (2) is considered to be a finding as a matter of law and creates a rebuttable presumption that the processing operation is operating under generally accepted practices or that the processing operation is not a public or private nuisance.

(4) A processing operation that is in conformance with subsection (1) or (2) shall not be found to be a public or private nuisance as a result of any of the following:

(a) A change in ownership or size.

(b) Temporary cessation or interruption of processing.

(c) Adoption of new technology.

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

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 669 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Dany E. Randall

Clerk of the House of Representatives

Approved

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Governor