Act No. 381
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Gougeon, McManus, Schuette, Schwarz, Emmons, North, Cisky, Koivisto, Stille and Gast

ENROLLED SENATE BILL No. 1025

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.

The People of the State of Michigan enact:

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

Sec. 2. As used in this act:

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

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

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

(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, 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, 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, and grain products and associated inputs necessary for fruit and vegetable, dairy, and grain, food, 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, 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, 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, and grain processing practices.

(2) 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 if, before that change in use or occupancy of land, the processing operation would not have been found to be a nuisance.

(3) A processing operation that is in conformance with subsection (1) 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, or grain product being processed.

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

(2) The Michigan commission of agriculture and the director of the Michigan department of agriculture may enter into a memorandum of understanding with the Michigan department of environmental quality. The investigation and resolution of nuisance complaints shall be conducted pursuant to the memorandum of understanding.

(3) If the director of the Michigan department of agriculture or his or her designee finds upon investigation that the person responsible for the processing operation is using generally accepted fruit, vegetable, dairy product, and grain processing practices, the director of the Michigan department of agriculture or his or her designee shall notify that person and the complainant of this finding in writing. If the director of the Michigan department of agriculture or his or her designee identifies 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 of the Michigan department of agriculture or his or her designee shall 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 of the Michigan department of agriculture or his or her designee shall determine if those changes are implemented and shall notify the person responsible for the processing operation and the complainant of this determination in writing.

(4) A complainant who brings more than 3 unverified nuisance complaints against the same processing operation within 3 years may be ordered by the director of the Michigan department of agriculture to pay to the Michigan department of agriculture the full costs of investigation of any fourth or subsequent unverified nuisance complaint against the same processing operation. As used in this subsection, "unverified nuisance complaint" means a nuisance complaint in which the director of the department of agriculture or his or her designee determines that the processing operation is using generally accepted fruit, vegetable, dairy product, and grain processing practices.

Sec. 5. (1) This act does not affect the application of state statutes and federal statutes.

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

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

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

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

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