

SENATE BILL No. 668

June 29, 2005, Introduced by Senators VAN WOERKOM, SANBORN, GILBERT, TOY, ALLEN, JELINEK, STAMAS, KUIPERS, SIKKEMA, HAMMERSTROM, McMANUS, GARCIA, BIRKHOLZ, HARDIMAN, GOSCHKA and BARCIA and referred to the Committee on Agriculture, Forestry and Tourism.

A bill to amend 1998 PA 381, entitled
"Michigan agricultural processing act,"
by amending section 3 (MCL 289.823).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) A processing operation shall not be found to be a
2 public or private nuisance if the processing operation alleged to
3 be a nuisance conforms to generally accepted fruit, vegetable,
4 dairy product, and grain processing practices as determined by the
5 Michigan commission of agriculture. **UNTIL THE MICHIGAN COMMISSION**
6 **OF AGRICULTURE ESTABLISHES THE GENERALLY ACCEPTED FRUIT, VEGETABLE,**
7 **DAIRY PRODUCT, AND GRAIN PROCESSING PRACTICES, A PROCESSING**
8 **OPERATION SHALL NOT BE FOUND TO BE A PUBLIC OR PRIVATE NUISANCE IF,**
9 **IN AN ACTION BROUGHT IN A COURT OF COMPETENT JURISDICTION, THE**
10 **PROCESSING OPERATION IS FOUND AS A MATTER OF LAW TO BE IN**

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1 COMPLIANCE WITH EXISTING NATIONAL GENERALLY ACCEPTED PRACTICES. The
2 Michigan commission of agriculture shall annually review and
3 revise, as determined necessary, the generally accepted fruit,
4 vegetable, dairy product, and grain processing practices.

5 (2) A processing operation shall not be found to be a public
6 or private nuisance ~~if the~~ UNDER EITHER OF THE FOLLOWING
7 CIRCUMSTANCES:

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

13 (B) THE PROCESSING OPERATION HAD BEEN OPERATING UNDER
14 GENERALLY ACCEPTED PRACTICES BEFORE ANY NUISANCE COMPLAINT WAS
15 BROUGHT, HAD BEEN OPERATING PURSUANT TO ANY REQUIRED WATER PERMITS,
16 AND HAD NOT BEEN SUBJECT TO PROSECUTION OR SANCTION ON THE BASIS OF
17 AN IMMINENT PUBLIC HEALTH THREAT. THE FINDING OF THE CIRCUMSTANCES
18 DESCRIBED IN THIS SUBDIVISION IS CONSIDERED TO BE A FINDING AS A
19 MATTER OF LAW AND CREATES A REBUTTABLE PRESUMPTION THAT THE
20 PROCESSING OPERATION IS OPERATING UNDER GENERALLY ACCEPTED
21 PRACTICES.

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

- 25 (a) A change in ownership or size.
26 (b) Temporary cessation or interruption of processing.
27 (c) Adoption of new technology.

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