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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007**

Introduced by Reps. Mayes, Accavitti, Ball, Bauer, Bieda, Booher, Brown, Calley, Caul, Cheeks, Corriveau, Coulouris, Cushingberry, Donigan, Espinoza, Gaffney, Gillard, Gonzales, Griffin, Hammon, Hansen, Horn, Johnson, Rick Jones, Robert Jones, Kathleen Law, LeBlanc, Leland, Lemmons, Meadows, Meekhof, Moolenaar, Nitz, Nofs, Opsommer, Polidori, Proos, Sak, Sheltroun, Alma Smith, Stahl and Warren

ENROLLED HOUSE BILL No. 4956

AN ACT to amend 2000 PA 92, entitled "An act to codify the licensure and regulation of certain persons engaged in processing, manufacturing, production, packing, preparing, repacking, canning, preserving, freezing, fabricating, storing, selling, serving, or offering for sale food or drink for human consumption; to prescribe powers and duties of the department of agriculture; to provide for delegation of certain powers and duties to certain local units of government; to provide exemptions; to regulate the labeling, manufacture, distribution, and sale of food for protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of foods in violation of this act; to provide standards for food products and food establishments; to provide for enforcement of the act; to provide penalties and remedies for violation of the act; to provide for fees; to provide for promulgation of rules; and to repeal acts and parts of acts," by amending sections 1105, 1107, 1109, 2111, 2113, 2119, 2123, 2125, 2129, 3103, 3119, 3121, 3123, 3125, 3127, 3135, 3137, 3139, 4101, 4103, 4105, and 4107 (MCL 289.1105, 289.1107, 289.1109, 289.2111, 289.2113, 289.2119, 289.2123, 289.2125, 289.2129, 289.3103, 289.3119, 289.3121, 289.3123, 289.3125, 289.3127, 289.3135, 289.3137, 289.3139, 289.4101, 289.4103, 289.4105, and 289.4107), sections 1109 and 3119 as amended by 2002 PA 487; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1105. As used in this act:

(a) "Adulterated" means food to which any of the following apply:

(i) It bears or contains any poisonous or deleterious substance that may render it injurious to health except that, if the substance is not an added substance, the food is not considered adulterated if the quantity of that substance in the food does not ordinarily render it injurious to health.

(ii) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive considered unsafe within the meaning of subparagraph (v).

(iii) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subparagraph (v).

(iv) It bears or contains any food additive considered unsafe within the meaning of subparagraph (v) provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subparagraph (v) and the raw agricultural commodity has been subjected to processing the residue of that pesticide chemical remaining in or on that processed food is, notwithstanding the provisions of subparagraph (v) and this subdivision, not be considered unsafe if that residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and if the concentration of that residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(v) Any added poisonous or deleterious substance, any food additive, and pesticide chemical in or on a raw agricultural commodity, or any color additive is considered unsafe for the purpose of application of this definition, unless there is in effect a federal regulation or exemption from regulation under the federal act, meat inspection act, poultry product inspection act, or other federal acts, or a rule adopted under this act limiting the quantity of the substance, and the use or intended use of the substance, and the use or intended use of the substance conforms to the terms prescribed by the rule.

(vi) It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 360b of the federal act, 21 USC 360b.

(vii) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or it is otherwise unfit for food.

(viii) It has been produced, prepared, packed, or held under insanitary conditions in which it may have become contaminated with filth or in which it may have been rendered diseased, unwholesome, or injurious to health.

(ix) It is the product of a diseased animal or an animal that has died other than by slaughter or that has been fed uncooked garbage or uncooked offal from a slaughterhouse.

(x) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.

(xi) A valuable constituent has been in whole or in part omitted or abstracted from the food; a substance has been substituted wholly or in part for the food; damage or inferiority has been concealed in any manner; or a substance has been added to the food or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is.

(xii) It is confectionery and has partially or completely imbedded in it any nonnutritive object except in the case of any nonnutritive object if, as provided by rules, the object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health; it bears or contains any alcohol other than alcohol not in excess of 1/2 of 1% by volume derived solely from the use of flavoring extracts; or it bears or contains any nonnutritive substance except a nonnutritive substance such as harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess of 4/10 of 1%, harmless natural gum and pectin or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances which is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of the provisions of this act. For the purpose of avoiding or resolving uncertainty as to the application of this subdivision, the director may issue rules allowing or prohibiting the use of particular nonnutritive substances.

(xiii) It is or bears or contains any color additive that is unsafe within the meaning of subparagraph (v).

(xiv) It has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a rule or exemption under this act or a regulation or exemption under the federal act.

(xv) It is bottled water that contains a substance at a level higher than allowed under this act.

(b) "Advertisement" means a representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of food.

(c) "Bed and breakfast" means a private residence that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms to transient tenants, and serves breakfasts, or other meals in the case of a bed and breakfast described in section 1107(n)(ii), at no extra cost to its transient tenants. A bed and breakfast is not considered a food service establishment if exempt under section 1107(n)(ii) or (iii).

(d) "Color additive" means a dye, pigment, or other substance made by process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or when added or applied to a food or any part of a food is capable alone or through reaction with other substance of imparting color to the food. Color additive does not include any material that is exempt or hereafter is exempted under the federal act. This subdivision does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly

or indirectly, the growth of other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest. Color includes black, white, and intermediate grays.

(e) "Contaminated with filth" means contamination applicable to any food not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(f) "Continental breakfast" means the serving of only non-potentially-hazardous food such as a roll, pastry or doughnut, fruit juice, or hot beverage, but may also include individual portions of milk and other items incidental to those foods.

(g) "Critical violation" or "critical item" means a violation of the food code that the director determines is more likely than other violations to contribute to food contamination, illness to humans, or environmental health hazard.

Sec. 1107. As used in this act:

(a) "Department" means the Michigan department of agriculture.

(b) "Director" means the director of the Michigan department of agriculture or his or her designee.

(c) "Evaluation" means a food safety audit, inspection, or food safety and sanitation assessment, whether announced or unannounced, that identifies violations or verifies compliance with this act and determines the degree of active control by food establishment operators over foodborne illness risk factors.

(d) "Extended retail food establishment" means a retail grocery that does both of the following:

(i) Serves or provides an unpackaged food for immediate consumption.

(ii) Provides customer seating in the food service area.

(e) "Fair concession" means a food concession, storage, preparation, or dispensing operation at a state or county fair.

(f) "Federal act" means the federal food, drug, and cosmetic act, 21 USC 301 to 397.

(g) "Food" means articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.

(h) "Food additive" means any substance, the intended use of which, directly or indirectly, results in or may be reasonably expected to result in its becoming a component or otherwise affecting the characteristics of any food if that substance is not generally recognized among experts as having been adequately shown through scientific procedures to be safe under the conditions of its intended use. Food additive includes any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and includes any source of radiation intended for any use. Food additive does not include any of the following:

(i) A pesticide chemical in or on a raw agricultural commodity.

(ii) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.

(iii) A color additive.

(iv) Any substance used in accordance with a sanction or approval granted before the enactment of the food additives amendment of 1958, Public Law 85-929, pursuant to the federal act, the poultry products inspection act, 21 USC 451 to 471, or the meat inspection act of March 4, 1907, chapter 2907, 34 Stat. 1258.

(i) "Food code" means food code, 2005 recommendations of the food and drug administration of the United States public health service that regulates the design, construction, management, and operation of certain food establishments.

(j) "Food establishment" means an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes a food processing plant, a food service establishment, and a retail grocery. Food establishment does not include any of the following:

(i) A charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event.

(ii) An inpatient food operation located in a health facility or agency subject to licensure under article 17 of the public health code, MCL 333.20101 to 333.22260.

(iii) A food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.

(k) "Food processing plant" means a food establishment that processes, manufactures, packages, labels, or stores food and does not provide food directly to a consumer.

(l) "Food safety and sanitation assessment" means judging or assessing specific food handling activities, events, conditions, or management systems in an effort to determine their potential effectiveness in controlling risks for foodborne illness and required compliance with this act, accompanied by a report of findings.

(m) "Food safety audit" means the methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices for compliance with this act, accompanied by a report of findings. Food safety audit includes checking or testing, or both, of observable practices and procedures to determine compliance with standards contained in or adopted by this act, accompanied by a report of findings.

(n) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

(i) A motel that serves continental breakfasts only.

(ii) A bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(iii) A bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.

(iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.

(o) "Food warehouse" means a food establishment that stores or distributes prepackaged food for wholesaling.

Sec. 1109. As used in this act:

(a) "Imminent or substantial hazard" means a condition at a food establishment that the director determines requires immediate action to prevent endangering the health of people.

(b) "Inspection" means the checking or testing of observable practices against standards established in or adopted by this act, accompanied by a report of findings.

(c) "Juice" means the aqueous liquid expressed or extracted from 1 or more fruits or vegetables, purees of the edible portions of 1 or more fruits or vegetables, or any concentrates of such liquid or puree.

(d) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article and includes a requirement imposed under this act that any word, statement, or other information appearing on the display also appear on the outside container or wrapper of the retail package of the article or be easily legible through the outside container or wrapper.

(e) "Labeling" means all labels and other written, printed, or graphic matter upon an article, any of its containers or wrappers, or accompanying the article.

(f) "License limitation" means an action by which the director imposes restrictions or conditions, or both, on a license of a food establishment.

(g) "License holder" means the entity that is legally responsible for the operation of the food establishment including the owner, the owner's agent, or other person operating under apparent authority of the owner possessing a valid license to operate a food establishment.

(h) "Limited wholesale food processor" means a wholesale food processor that has \$25,000.00 or less in annual gross wholesale sales made or business done in wholesale sales in the preceding licensing year, or \$25,000.00 or less of the food is reasonably anticipated to be sold for the current licensing year. Only the food sales from the wholesale food processor operation are used in computing the annual gross sales under this subdivision.

(i) "Local health department" means that term as defined in section 1105 of the public health code, MCL 333.1105, and having those powers and duties as described in part 24 of the public health code, MCL 333.2401 to 333.2498.

(j) "Milk product" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk product does include dietary dairy products, dairy-based infant formula, ice cream and other frozen desserts, cheese, butter, and any other product derived from milk.

(k) "Misbranded" means food to which any of the following apply:

(i) Its labeling is false or misleading in any particular.

(ii) It is offered for sale under the name of another food.

(iii) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(iv) Its container is so made, formed, or filled as to be misleading.

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(vi) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by this act or under the federal act, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(x) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 USC 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(xiii) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(l) "Mobile food establishment" means a food establishment operating from a vehicle or watercraft that returns to a licensed commissary for servicing and maintenance at least once every 24 hours.

(m) "Mobile food establishment commissary" means an operation that is capable of servicing a mobile food establishment.

(n) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.

(o) "Pesticide chemical" means any substance that, alone, in chemical combination, or in formulation with 1 or more other substances, is a pesticide within the meaning of the federal insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and is used in the production, storage, or transportation of raw agricultural commodities.

(p) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(q) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

Sec. 2111. (1) The director shall have free access at all reasonable hours to any food establishment, including a vehicle used to transport or hold food, for the purpose of evaluating that food establishment or vehicle to determine if any of the provisions of this act are being violated. The director may secure samples or specimens of any food after paying or offering to pay for such samples in order to determine whether any provision of this act is being violated.

(2) The director may examine the records of the food establishment to obtain pertinent information about food, supplies, and equipment purchased, received, or used by, or pertaining to, persons employed by the food establishment or location.

(3) The director may take photographs or copy records as part of an evaluation. When a food establishment identifies by written document or mark that a certain area or record contains visible trade secrets, the director shall identify any photographs of that area or record as being confidential and shall diligently protect the confidentiality.

Sec. 2113. (1) The director may order immediate cessation of operation of a food establishment upon a determination that continued operation would create an imminent or substantial hazard to the public health.

(2) A food establishment ordered to cease food operations under subsection (1) shall not resume operations until the director determines, upon reevaluation, that the conditions responsible for the order to cease operations no longer exist. The director shall offer an opportunity for reevaluation upon request of the license holder of the establishment.

(3) If the director orders an immediate cessation of operation of a food establishment under subsection (1), the license holder may request an administrative hearing.

Sec. 2119. (1) Notwithstanding section 12909(1) of the public health code, MCL 333.12909, the department may promulgate rules to prescribe criteria for food service sanitation programs by local health departments. The department in promulgating these rules shall seek the advice and counsel of local health departments and the food service industry.

(2) The department shall periodically conduct comprehensive reviews of each local health department's food service sanitation program. The reviews shall be based on criteria developed by the department with input from local health departments and shall include a review of both of the following:

(a) The adequacy of sanitary conditions in the food service establishments within the local health department jurisdiction.

(b) The competency and training of the food service inspection personnel.

Sec. 2123. (1) A person whose license has been limited by the director may, at any time, request a reevaluation of the food establishment for the purpose of removing the limitation and reinstating the full license.

(2) Based upon its reevaluation, if the director determines that the conditions for removal of the license limitation have been met, he or she shall remove the limitation and reinstate the full license.

Sec. 2125. (1) The department shall charge the following fees for the following services:

(a) A reissuance of a duplicate license, \$15.00.

(b) A free-sale letter, \$25.00 per letter in an order and \$5.00 per duplicate letter in the same order.

(c) An evaluation of a food establishment when the evaluation is a second reevaluation of a food establishment that has already been evaluated and found to contain a critical violation or the evaluation is performed at the request of the operator, \$60.00.

(d) A review and approval of training materials, \$60.00 per hour.

(e) A special transitory food unit plan review, \$197.00.

(f) A plan review as specified in section 8-201.11 of the food code, \$197.00.

(2) Fees collected under this section shall be deposited in the dairy and food safety fund for enforcement of this act.

(3) The services referred to in subsection (1)(d) and (e) involve the formal review and approval procedure. The department may provide informal review or answer questions without charging a fee.

Sec. 2129. (1) Beginning June 30, 2009, the following food establishments shall employ a minimum of 1 managerial employee who is currently certified under a personnel certification program accredited by the American national standards institute, utilizing the conference for food protection standards:

(a) A food service establishment that is not any of the following:

(i) A mobile food establishment.

(ii) Operating under a temporary food service establishment license.

(iii) A special transitory food unit.

(iv) A vending machine location.

(b) An extended retail food establishment.

(c) The operation of a food service establishment within a retail grocery.

(2) An individual certified under subsection (1) shall be recognized with full faith and credit by the state and all local units of government throughout the state.

(3) The department may promulgate rules to do all of the following:

(a) By January 1, 2009, develop requirements for retail food establishments to follow when employing certified food safety managers or personnel.

(b) Set a reasonable date for compliance with the requirements taking into consideration existing local personnel certification requirements.

(c) Establish certification fees necessary to implement, maintain, and track certified individuals directly or by contract. The department may annually adjust the schedule of fees to provide that the fee charged is sufficient to cover the cost of the certification tracking program.

(d) Implement and enforce the requirements described in subdivision (a).

(e) The certification program developed by the American national standards institute, as it exists on the effective date of the amendatory act that added this section, is incorporated by reference. The department may adopt updates to the certification program accreditation standards in subsection (1) by rule.

(4) This section does not prohibit any local legislative body from implementing a food handler program, an employee health certification program, or a manager certification program, provided it is not in conflict with this section.

Sec. 3103. As used in this chapter:

(a) "Certified health department" means a county, district, or city health department that meets the criteria for certification of health departments established by this act and that is authorized by the director to enforce this act for retail groceries, food processing plants, or fair concessions.

(b) "Foodborne illness outbreak" means an incident where any of the following occur:

(i) Two or more persons, not of the same household, have ingested a common food and have a similar disease, similar symptoms, or excrete the same pathogens and there is a time, place, or person association between these persons.

(ii) There is a single case of suspected botulism, mushroom poisoning, paralytic shellfish poisoning, or other rare disease.

(iii) There is a case of a disease or poisoning that can be definitely related to ingestion of a food.

(c) "Food service sanitation program" means the systematic activity of the department and a local health department for effective administration and enforcement of the food code and this act, including all of the following:

(i) Periodic evaluations of food service establishments, temporary food service establishments, vending machines, and vending machine locations for compliance with law.

(ii) Support of recommendations for licensure with appropriate records.

(iii) Review of plans and specifications for new and extensively remodeled establishments.

(iv) Educational activities.

(v) Investigation of reports of foodborne illnesses.

(vi) Other activities which may be necessary to assure proper implementation of this act.

Sec. 3119. (1) Except as otherwise provided for in subsection (2), upon submission of an application, an applicant for a food service establishment license shall pay to the local health department having jurisdiction the required fees authorized by section 2444 of the public health code, MCL 333.2444, and an additional state license fee as follows:

(a) Vending machine location fee	\$ 3.00.
(b) Temporary food service establishment.....	\$ 3.00.
(c) Food service establishment.....	\$ 22.00.
(d) Mobile food establishment commissary	\$ 22.00.
(e) Special transitory food unit.....	\$ 35.00.

(2) When licensing a special transitory food unit, a local health department shall impose a fee of \$135.00, which includes the additional state license fee imposed under subsection (1) unless exempted under subsection (4) or (5).

(3) The state license fee required under subsection (1) shall be collected by the local health department at the time the license application is submitted. The state license fee is due and payable by the local health department to the state within 60 days after the fee is collected.

(4) A charitable, religious, fraternal, service, civic, or other nonprofit organization that has tax-exempt status under section 501(c)(3) of the internal revenue code of 1986 is exempt from paying additional state license fees imposed under this section except for the vending machine location license fee. An organization seeking an exemption under this subsection shall furnish to the department or a local health department evidence of its tax-exempt status.

(5) A veteran who has a waiver of a license fee under the circumstances described in 1921 PA 359, MCL 35.441 to 35.443, is exempt from paying the fees prescribed in this section.

(6) The department shall adjust on an annual basis the fees prescribed by subsections (1) and (2) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index but not to exceed 5%. As used in this subsection, "Detroit consumer price index" means the most comprehensive

index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor or its successor. The adjustment shall be rounded to the nearest dollar to set each year's fee under this subsection, but the absolute value shall be carried over and used to calculate the next annual adjustment.

(7) The local health department shall forward the license applications to the department with appropriate recommendations.

Sec. 3121. (1) The department or a local health department shall conduct evaluations in compliance with this act.

(2) Records for all of the following shall be maintained by a local health department:

(a) Applications for licensure.

(b) Operation licenses.

(c) Evaluation reports.

(d) Pertinent correspondence.

(e) Plans and specifications.

(f) Administrative actions.

(g) Other applicable information relating to the operation of each food service establishment.

(3) A local health department shall maintain a record of all consumer complaints, the ensuing investigation, and the result of the complaint.

(4) All department and local health department records shall be retained in accordance with the records retention schedule of the department.

Sec. 3123. (1) A compliance evaluation of each food service establishment shall be performed by the director at least once every 6 months or as required by a statewide department approved risk-based schedule. Risk-based schedules shall be developed in consultation with local health departments.

(2) A food service establishment which operates for 9 or fewer months each year shall be inspected at least once during the period of operation by the director or as prescribed in the department's risk-based schedule.

Sec. 3125. (1) Subject to subsection (3), a local health department, with the approval of the director and based on criteria developed by the department in consultation with local health departments, may reduce the frequency of evaluations of individual food service establishments if the local health department determines that a reduced evaluation frequency will not adversely affect food service sanitation practices within the food service establishment.

(2) A food service establishment which, upon investigation, is implicated in a foodborne illness outbreak or chemical intoxication shall be evaluated by the director in compliance with section 3123 for not less than the next 12 months.

(3) A local health department shall not reduce the minimum frequency of evaluations of any food service establishment to less than that described in section 3123 unless approved by the department.

Sec. 3127. (1) The findings of an evaluation of a food service establishment shall be recorded on an evaluation report form approved by the department. The form shall identify those items considered to be critical from a public health standpoint.

(2) The evaluation report shall summarize findings relative to compliance with the requirements of this act. The report form shall be signed and dated by the local health department representative.

(3) Upon completion of the evaluation, a copy of the completed evaluation report form shall be furnished to the person in charge of the food service establishment. The person in charge shall sign the report form acknowledging receipt.

Sec. 3135. (1) The department shall make available to any local health department an application form to be completed as a request for certification. The application shall provide information needed to substantiate the request to become a certified health department.

(2) A local health department seeking certification shall have sufficient trained administrative, evaluation, and support personnel and sufficient equipment to enforce applicable laws and rules consistent with current state standards in all licensed establishments within its jurisdictional boundaries.

(3) A certified health department shall demonstrate to the department the ability to conduct evaluations and related activities in accordance with the department's electronic evaluation system within prescribed time limitations utilized by the department. Evaluation, investigation, and legal actions and related activities shall be reported to the department on forms furnished by the department.

(4) A certified health department must be capable of conducting necessary sampling and product surveillance equal to state standards.

Sec. 3137. (1) The department shall conduct a general review and evaluation of reports and related data made by certified health departments under this act as often as considered necessary by the department.

(2) An evaluation quality assurance program consisting of field evaluation of performed evaluations conducted by the certified health department shall be routinely conducted by the department at a ratio of approximately 1 per 100 evaluations made.

(3) A certified health department shall report annually to the department a summary of all inspections, investigations, samplings, legal actions, and any other actions of a significant nature on a form furnished by the department. This report shall be made annually on the basis of the state fiscal year.

(4) A review disclosing adverse findings shall be reported in writing by the department to the health officer of the certified health department within 30 days after the review under subsection (1) is completed.

Sec. 3139. (1) If a certified health department fails to meet the requirements established in this act or rules promulgated under this act, written notice of deficiencies shall be furnished to the health officer of that certified health department within 30 days after completion of the review under section 3137. This notice shall offer an opportunity to the health officer of the certified health department for a hearing with the director. If a hearing is not requested, certification issued under this chapter shall be revoked within 30 days following the notice to the health officer of the certified health department. If a hearing is held and deficiencies are not corrected within the time period specified in the hearing, certification shall be revoked within the time period specified in the hearing.

(2) If requested by the health officer of the certified health department in a written notice to the director, certification issued under this chapter shall be revoked within 30 days of receipt of the written notice.

(3) Revocation of certification issued under this chapter does not restrict a health department from reapplication for certification.

Sec. 4101. (1) Except as provided in section 4105, a person shall not operate a food establishment unless licensed by the department as a food establishment.

(2) Separate areas for food service or preparation located in 1 building and actively operated under 1 management are considered to be 1 food establishment and only 1 license is required. The director may require separate licenses for these areas if managed separately even though under the same owner.

(3) Except as otherwise provided in this act, a city, county, or other local unit of government shall not adopt or enforce licensing ordinances or regulations for persons regulated under this act.

Sec. 4103. (1) An applicant shall submit an application for a food establishment license at least 30 calendar days before the date planned for its opening or the change of ownership. For temporary food establishments applying less than 4 days from opening, the director may charge twice the applicable license fee to perform the licensing evaluation.

(2) Application for the license under subsection (1) shall be submitted upon the forms approved by the department and shall contain the reasonable information required by the department to process the application.

(3) An application for a mobile food establishment license shall include all of the following information:

(a) The location and dates of the operation.

(b) The name and address of the commissary that will service the applicant.

(4) Within 10 days after a change in the servicing commissary, the mobile food establishment licensee shall submit an affidavit containing the name and address of the new commissary servicing the licensee.

(5) The director may issue a temporary food establishment license.

Sec. 4105. (1) Except as otherwise provided for in subsection (2), a person, establishment, or organization that is 1 or more of the following is exempt from the licensure requirements under this act:

(a) Subject to subsection (2), an establishment licensed under 1 of the following acts while conducting activities within the scope of that act:

<u>Public Act No.</u>	<u>Year</u>	<u>Compiled Law Sections</u>
141	1939	285.61 to 285.88
228	1959	286.371 to 286.379
158	1964	290.451 to 290.466
266	2001	288.471 to 288.540
267	2001	288.561 to 288.740

(b) A person that is offering only whole uncut fresh fruits and vegetables directly to consumers.

(c) Consumers or nonprofit cooperatives of consumers in compliance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, providing products from regulated sources only for their own use.

(d) Nonprofit cooperatives in compliance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, who are growers selling unprocessed products of their own production or are producers selling unprocessed products of their own production from regulated sources.

(e) Retail outlets for the sale of prepackaged honey or maple syrup produced in Michigan if the outlet is operated by the producer and the processing facility is licensed under this act.

(f) A temporary food establishment with no food preparation using only single-service articles and serving only non-potentially-hazardous food or beverage.

(g) A retail food establishment that does both of the following:

(i) Only sells prepackaged, non-potentially-hazardous foods.

(ii) Offers only an incidental amount of food, such as the sale of single-service packages.

(h) A mobile food establishment, such as an ice cream truck, that offers only prepackaged, single-serving frozen desserts.

(i) An event not open to the general public held by a nonprofit trade association representing food establishments, suppliers, or manufacturers where limited food preparation takes place for the purpose of advertising, displaying, promoting, and sampling prepared food.

(j) A commercial fishing guide service that serves lunch to a party of not more than 12 clients on or adjacent to a body of water, river, or stream while pursuing, capturing, catching, killing, taking, or attempting to take fish. As used in this subparagraph, "commercial fishing guide service" means a service provided for a fee or other valuable consideration, regardless of whether the fee or other valuable consideration is paid directly or indirectly, to assist another person in pursuing, capturing, catching, killing, taking, or attempting to take fish.

(k) A person owning or operating a device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk gum, nuts, and panned candies.

(l) Feeding operations set up in response to an emergency or disaster.

(2) Notwithstanding subsection (1)(a), a person operating as or conducting activities the director considers to be a food establishment must be licensed in the appropriate category under this act.

(3) If food is prepared in a food service establishment licensed under this chapter and the food is transported from the food service establishment to a fixed temporary serving location, the serving location is not required to be separately licensed and is considered an extension of the food service establishment if no food preparation is conducted at the serving location and the food is transported and served by employees of the food service establishment.

Sec. 4107. To qualify for a food establishment license, an applicant shall do all of the following:

(a) Submit an application as required by section 4103.

(b) Be an owner of the food establishment or an officer of the legal entity owning the food establishment.

(c) Comply with the requirements of this act and rules promulgated under this act.

(d) Allow the director access to the proposed food establishment in order to determine compliance with the applicable requirements of this act and rules.

(e) Pay the applicable license fees at the time the application is submitted.

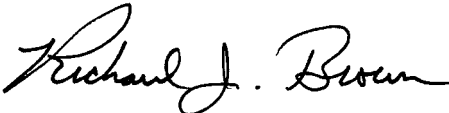
Enacting section 1. Sections 1115, 1117, and 6151 of the food law of 2000, 2000 PA 92, MCL 289.1115, 289.1117, and 289.6151, are repealed effective April 1, 2008.

Enacting section 2. (1) Sections 2125, 3119, and 4103 of the food law of 2000, 2000 PA 92, MCL 289.2125, 289.3119, and 289.4103, as amended by this amendatory act, take effect January 1, 2008.

(2) Sections 1105, 1107, 1109, 2111, 2113, 2119, 2123, 2129, 3103, 3121, 3123, 3125, 3127, 3135, 3137, 3139, 4101, 4105, and 4107 of the food law of 2000, 2000 PA 92, MCL 289.1105, 289.1107, 289.1109, 289.2111, 289.2113, 289.2119, 289.2123, 289.2129, 289.3103, 289.3121, 289.3123, 289.3125, 289.3127, 289.3135, 289.3137, 289.3139, 289.4101, 289.4105, and 289.4107, as amended by this amendatory act, take effect April 1, 2008.

Enacting section 3. This amendatory act does not take effect unless Senate Bill No. 595 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor