

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Reps. Denby, Kowall, Daley, Rogers, Rendon and Agema

# ENROLLED HOUSE BILL No. 5130

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 1101, 1105, 1107, 1109, 1111, 1113, 2119, 2125, 2127, 2129, 3103, 3105, 3125, 3127, 3133, 4102, 4103, 4105, 4111, 4117, 4123, 4125, 4127, 4129, 5101, 5105, 6101, 6107, 6129, 6135, 7101, 7113, 7133, 7137, and 8107 (MCL 289.1101, 289.1105, 289.1107, 289.1109, 289.1111, 289.1113, 289.2119, 289.2125, 289.2127, 289.2129, 289.3103, 289.3105, 289.3125, 289.3127, 289.3133, 289.4102, 289.4103, 289.4105, 289.4111, 289.4117, 289.4123, 289.4125, 289.4127, 289.4129, 289.5101, 289.5105, 289.6101, 289.6107, 289.6129, 289.6135, 289.7101, 289.7113, 289.7133, 289.7137, and 289.8107), section 1105 as amended by 2010 PA 113, section 1107 as amended by 2008 PA 338, sections 1109, 2119, 2125, 2129, 3103, 3125, 3127, and 4103 as amended by 2007 PA 113, section 4102 as added by 2010 PA 112, section 4105 as amended by 2010 PA 145, sections 4111, 4117, 4125, 5101, 5105, 6101, 6129, 7113, 7137, and 8107 as amended by 2007 PA 114, and section 7101 as amended by 2002 PA 487, and by adding sections 2132, 4114, 7104, 7112, and 7114; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Sec. 1101. This act shall be known and may be cited as the “food law”.

Sec. 1105. (1) 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 unless the substance is not an added substance and 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 subsection (2).

(iii) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subsection (2).

(iv) It bears or contains any food additive considered unsafe within the meaning of subsection (2). However, if a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or limitation prescribed under subsection (2) 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 subsection (2) and this subdivision, not 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) 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.

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

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

(viii) 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.

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

(x) 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.

(xi) It is confectionery and has partially or completely imbedded in it any nonnutritive object except 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 is confectionery and 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 is confectionery and 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 any chewing gum by reason of its containing harmless nonnutritive masticatory substances which is in or on the 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 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.

(xii) It is or bears or contains any color additive that is unsafe within the meaning of subsection (2).

(xiii) 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.

(xiv) 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) "Agricultural use operation" means a maple syrup production facility or similar food establishment that finishes a raw commodity and is integral to the agricultural production of, and is located at, a farm. An agricultural use operation is not considered a food processor or retail processing operation for purposes of personal or real property but must meet those same standards and licensing requirements as prescribed in this act.

(d) "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(t)(ii), at no extra cost to its transient tenants. A bed and breakfast is not a food service establishment if exempt under section 1107(t)(ii) or (iii).

(e) "Color additive" means a dye, pigment, or other substance that is made by a process of synthesis or similar artifice or is 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 substances 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.

(f) “Consumer” means an individual who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processor, and does not offer the food for resale.

(g) “Contaminated with filth” means contaminated as a result of not being securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(h) “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.

(i) “Core item” means a provision in the food code that is not designated as a priority item or a priority foundation item. Core item includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

(j) “Cottage food operation” means a person who produces or packages cottage food products only in a kitchen of that person’s primary domestic residence within this state.

(k) “Cottage food product” means a food that is not potentially hazardous food as that term is defined in the food code. Examples of cottage food product include, but are not limited to, jams, jellies, dried fruit, candy, cereal, granola, dry mixes, vinegar, dried herbs, and baked goods that do not require temperature control for safety. Cottage food product does not include any potentially hazardous food regulated under 21 CFR parts 113 and 114, examples of which include, but are not limited to, meat and poultry products; salsa; milk products; bottled water and other beverages; and home-produced ice products. Cottage food product also does not include canned low-acid fruits or acidified vegetables and other canned foods except for jams, jellies, and preserves as defined in 21 CFR part 150.

(2) Any added poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive is considered unsafe for the purpose of subsection (1)(a), unless there is in effect a federal regulation or exemption from regulation under the federal act, the federal meat inspection act, 21 USC 601 to 683, the poultry products inspection act, 21 USC 451 to 472, or another federal statute, or a rule 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 federal regulation or exemption or the rule.

Sec. 1107. As used in this act:

(a) “Department” means the department of agriculture and rural development.

(b) “Director” means the director of the department or his or her designee.

(c) “Domestic residence” means a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include either of the following:

(i) A group or communal residential setting within any type of structure.

(ii) An outbuilding, shed, barn, or other similar structure.

(d) “Egg” does not include a balut, which is an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

(e) “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.

(f) “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.

(g) “Fair” means a fair or exhibition operated and managed under 1929 PA 11, MCL 46.151 to 46.153, or held by an agricultural or horticultural society under 1855 PA 80, MCL 453.231 to 453.240.

(h) “Fair concession” means a food concession, storage, preparation, or dispensing operation at a state or county fair.

(i) “Farmers’ market” means a public and recurring assembly of farmers or their representatives selling directly to consumers food and products that the farmers have produced themselves. In addition, the market may include a variety of other vendors as determined by market management.

(j) “Federal act” means the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 USC 301 to 399d.

(k) “Festival” means an event, staged by a local community or local organization, that centers on and celebrates a certain aspect of that community or organization. Festival includes, but is not limited to, a fair, art show, chili cook-off, car show, hot air balloon festival, religious festival, drama festival, or cultural festival.

(l) “First receiver” means a person who receives eggs from a producer at any place of business and candles, grades, sorts, packs, or packages the eggs.

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

(n) “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 472, or the federal meat inspection act, 21 USC 601 to 683.

(o) “Food code” means food code, 2009 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.

(p) “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, but is not limited to, a food processor, a food warehouse, 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.

(q) “Food processor” means a food establishment that processes, manufactures, wholesales, packages, labels, or stores food. Food processor does not include a maple syrup producer. Processing is an act, such as canning, freezing, dehydrating, drying, distilling, extracting, preserving, grinding, crushing, milling, washing, trimming, packing, or otherwise preserving or changing the form of a food.

(r) “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.

(s) “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.

(t) “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 for rent.

(iii) A bed and breakfast that has more than 10 sleeping 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.

(u) “Food warehouse” means a food establishment that stores or distributes food for wholesale.

Sec. 1109. As used in this act:

(a) “Guide for the control of molluscan shellfish” means section II, model ordinance, national shellfish sanitation program guide for the control of molluscan shellfish, 2009, recommendations of the U.S. department of health and human services, public health service, food and drug administration.

(b) “HACCP plan” means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the national advisory committee on microbiological criteria for foods.

(c) “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.

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

(e) “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.

(f) “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.

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

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

(i) “License holder” means the person who is legally responsible for the operation of a food establishment including the owner, the owner’s agent, or other person operating under apparent authority of the owner and who possesses a valid license to operate a food establishment.

(j) “Limited food processor” means a food processor that had in the preceding licensing year or is reasonably anticipated to have in the current licensing year \$25,000.00 or less in annual gross wholesale sales made or business done in wholesale sales. Only the food sales from the food processor operation shall be used in computing the annual gross sales under this subdivision.

(k) “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.

(l) “Michigan bridge card” means the card used for the electronic benefit transfer system for food stamp distribution required under section 14h of the social welfare act, 1939 PA 280, MCL 400.14h.

(m) “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.

(n) “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 permitted and exemptions for small packages established by rules.

(vi) Any word, statement, date, 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 regulations promulgated under the federal act or by rules, unless it conforms to the 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 regulations or rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in the 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 if its quality falls below the 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 that 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 except 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 federal act.

(o) "Mobile food establishment" means a food establishment operating from a vehicle, including a watercraft, that returns to a mobile food establishment commissary for servicing and maintenance at least once every 24 hours.

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

(q) "Nonperishable food" means food that is not perishable food.

(r) "Perishable food" means any food that the manufacturer, packer, or retailer, in conjunction with the department, determines to have a significant risk of spoilage, loss of value, or loss of palatability within 90 days of the date of packaging.

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

(t) "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.

(u) "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.

(v) "Priority foundation item" means a provision in the food code whose application supports, facilitates, or enables 1 or more priority items. Priority foundation item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record-keeping, and labeling. A priority foundation item is an item that is denoted in the food code with a superscript Pf.<sup>Pf</sup>.

(w) "Priority item" means a provision in the food code whose application contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury if there is no other provision that more directly controls the hazard. Priority item includes an item with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, or hand washing. A priority item is an item that is denoted in the food code with a superscript P.<sup>P</sup>.

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

Sec. 1111. As used in this act:

(a) "Raw agricultural commodity" means any food in its raw or natural state including fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.

(b) "Regulatory authority" means the department, the local health department, or the authorized representative having jurisdiction over the food establishment.

(c) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment, but does not include a food processor.

(d) "Retail grocery" means an operation that sells or offers to sell food to consumers for off-premises consumption. Food for off-premises consumption does not include take-out food intended for immediate consumption.

(e) “Rules” means administrative rules promulgated under this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(f) “Shellfish dealer” means an interstate wholesaler handling shellfish.

(g) “Shellfish dealer certification” means the issuance of a numbered certificate to a person indicating that the person is in compliance with the requirements of the guide for the control of molluscan shellfish and that the person has permission from the department to conduct 1 or more of the following shellfish activities, as defined in the guide for the control of molluscan shellfish:

(i) Shellstock shipper.

(ii) Shucker packer.

(iii) Repacker or reshipper.

(h) “Smoked fish rules” means R 285.569.1 to 285.569.19 of the Michigan administrative code.

(i) “Special transitory food unit” means a temporary food establishment that is licensed to operate throughout the state without the 14-day limits or a mobile food establishment that is not required to return to a commissary.

(j) “Staple foods” does not include accessory foods such as coffee, tea, cocoa, soda, noncarbonated drinks such as sports drinks, punches, and flavored waters, candy, condiments, spices, hot foods, or foods ready to go or made to take out, such as prepared sandwiches or salads.

(k) “Sulfiting agents” means any of the following:

(i) Sulfur dioxide.

(ii) Sodium sulfite.

(iii) Sodium bisulfite.

(iv) Potassium bisulfite.

(v) Sodium metabisulfite.

(vi) Potassium metabisulfite.

(l) “Temporary food establishment” means a food establishment which operates at a fixed location for a temporary period not to exceed 14 consecutive days.

(m) “Temporary license” means a written authorization issued by the director to operate for a specified limited time period.

(n) “Transient tenant” means a person who rents a room in a bed and breakfast for fewer than 30 consecutive days.

(o) “Trimming” is an act of removing leaves, roots, and other extraneous materials in preparation for grading, sorting, and sale as a whole fruit or vegetable. Trimming does not remove the peel or core and does not further cut the whole fruit or vegetable.

(p) “U.S. standards for shell eggs” means United States standards, grades, and weight classes for shell eggs, AMS 56 (July 20, 2000), United States department of agriculture.

(q) “Vending machine” means a self-service device offered for public use that, upon activation by a coin, token, card, key, or paper currency, dispenses unit servings of food or beverages without the necessity of replenishing the device between each vending operation. Vending machine does not include any of the following:

(i) A device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk ball gum, nuts, and panned candies.

(ii) A water-dispensing machine that is registered under chapter IV.

(r) “Vending machine location” means the room, enclosure, space, or area in which 1 or more vending machines are installed and operated.

(s) “Wholesale” means selling other than directly to consumers.

(t) “Wild game” means animals from their natural state and not cultivated, domesticated, or tamed.

Sec. 1113. (1) A term defined in the food code has the same meaning when used in this act, except as specifically defined in this act.

(2) The terms “critical violation” and “noncritical violation” shall not be used by a regulatory authority to classify violations of the food code.

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 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 provide evaluation, consultation, and training support to local health departments delegated authority and responsibility to perform food service program activities under section 3105.

(3) The department shall periodically conduct comprehensive reviews of each local health department's food service program. The reviews shall be based on criteria developed by the department with input from local health departments and may include a review of 1 or more elements of the following:

- (a) Compliance with this act by the food service establishments within the local health department jurisdiction.
- (b) The competency and training of the food service evaluation personnel.
- (c) Compliance with the delegated program activities and established program review criteria, including implementation of risk-based strategies.

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 if the evaluation is a second reevaluation of a food establishment that has already been evaluated and found to have a priority item or priority foundation item violation or if the evaluation is performed at the request of the operator, \$60.00.
  - (d) A shellfish dealer's certificate, \$150.00 annually.
  - (e) A review and approval of training materials, \$60.00 per hour.
  - (f) A special transitory food unit plan review, \$197.00.
  - (g) 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 created in section 4117 for enforcement of this act.
- (3) The services referred to in subsection (1)(e) and (f) involve the formal review and approval procedure. The department may provide informal review or answer questions without charging a fee.

Sec. 2127. After a conference with the owner of a retail food establishment for a repeated failure to correct a priority item or priority foundation item violation, the director may require certain individuals to complete manager food safety training for that food establishment.

Sec. 2129. (1) All of 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) Operating under a temporary food service establishment license.
    - (ii) A vending machine location.
  - (b) An extended retail food establishment.
  - (c) Operated 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) 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 under subdivision (a) 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).
- (4) The certification program developed by the American national standards institute, as it exists on April 1, 2008, is incorporated by reference. The department may adopt updates to the certification program accreditation standards in subsection (1) by rule.
- (5) 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, if it is not in conflict with this section.

Sec. 2132. The department may enter into agreements with other states and the federal government to provide and accept food safety assistance, including the training of personnel. Any employee of the department assigned to food safety duties or training programs outside this state shall be considered to be working inside this state for purposes of compensation and any other employee benefits.



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 processors, 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 or 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 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 ensure proper implementation of this act.

Sec. 3105. (1) The department shall delegate the authority and responsibility for the enforcement of the requirements pertaining to food service establishments contained in this act and rules to local health departments meeting the program criteria provided for in this act and rules. The local health departments shall enforce this act and rules and may delegate enforcement authority under a plan of organization approved pursuant to section 2431 of the public health code, MCL 333.2431. If a food service program is discontinued or is revoked for failure to meet the program criteria, redelegation to a local health department by the director of the program is not required. Local health departments delegated authority under this chapter shall enforce this act and rules in the manner provided for in part 24 of the public health code, MCL 333.2401 to 333.2498, except that late fees under section 4113, administrative fines under section 5105, and criminal fines under section 5107 are specifically not delegated to the local health departments.

(2) If a food service establishment is a part of a retail grocery or food processor and the retail grocery and food processor are the predominant part of the food business as determined by the department, authority and responsibility pertaining to that establishment are not delegated under subsection (1).

(3) If a retail grocery or food processor is a part of a food service establishment but the food service establishment is the predominant part of the food business as determined by the department, the authority and responsibility for the entire establishment are delegated under subsection (1).

(4) Mobile and temporary food establishments and special transitory food units that are predominantly food service establishments as determined by the department are delegated to the local health departments under subsection (1). Mobile and temporary food establishments and special transitory food units that are predominantly retail groceries or food processors are not delegated under subsection (1).

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 safety 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 for compliance within 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. A violation of a priority item or priority foundation item shall be designated as such on the form. A violation by a food establishment of section 12603 or 12905 of the public health code, MCL 333.12603 and 333.12905, is not a violation of a priority item or priority foundation item of this act or the food code.

(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 director.

(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. If the person in charge does not sign the report form acknowledging receipt, delivery of the report form to the person in charge shall be otherwise documented by the director.

Sec. 3133. Laboratories capable of providing the necessary analyses of food samples shall be utilized by a local health department to assist in the conduct of a food service program.

Sec. 4102. (1) A cottage food operation is exempt from the licensing and evaluation provisions of this act. This exemption does not include an exemption from the adulteration and other standards imposed in this section or under this act, or both, and does not limit the ability of the department to take appropriate enforcement action for applicable violations as described in section 5101. This subsection does not require a cottage food operation to meet the standards contained in 21 CFR part 110 or the food code.

(2) Cottage food products shall be prepackaged and properly labeled prior to sale.

(3) At a minimum, a cottage food operation shall place on the label of any food it produces or packages the following information:

(a) The name and address of the business of the cottage food operation.

(b) The name of the cottage food product.

(c) The ingredients of the cottage food product, in descending order of predominance by weight.

(d) The net weight or net volume of the cottage food product.

(e) Allergen labeling as specified by federal labeling requirements.

(f) If any nutritional claim is made, appropriate labeling as specified by federal labeling requirements.

(g) The following statement printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been inspected by the Michigan department of agriculture and rural development."

(4) Cottage food products may be sold directly from the cottage food operation to the consumer only, and not by internet or mail order. Sales by consignment or at wholesale are prohibited.

(5) The gross sales of cottage food products by a cottage food operation shall not exceed \$20,000.00 annually until December 31, 2017. After December 31, 2017, the gross sales of cottage food products by a cottage food operation shall not exceed \$25,000.00 annually. For the purposes of this subsection, gross sales shall be computed on the basis of the amount of gross sales within or at a particular domestic residence and shall not be computed on a per-person basis within or at that domestic residence. The department may request in writing documentation to verify the annual gross sales figure.

(6) Cottage food products shall be stored only in the primary domestic residence.

(7) An exemption under this section does not affect the application of any other state or federal laws or any applicable ordinances enacted by any local unit of government.

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 local health department shall forward license recommendations to the department. Section 3119(7) does not apply.

(6) The director may issue a temporary food establishment license. The director, pursuant to uniformly applied department guidance, may decline to issue multiple temporary food establishment licenses for the same establishment within a given calendar year.

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:

(i) Grain dealers act, 1939 PA 141, MCL 285.61 to 285.88.

(ii) 1959 PA 228, MCL 286.371 to 286.379.

(iii) 1964 PA 158, MCL 290.451 to 290.466.

(iv) Grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540.

(v) Manufacturing milk law of 2001, 2001 PA 267, MCL 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. Both retail outlets and processing facilities are exempt from licensure under this act for producers with gross sales of \$15,001.00 or less of honey or maple syrup. In such case, the honey and maple syrup shall have labeling substantially similar to that for cottage food products as described in section 4102(3).

(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, 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, 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.

(m) A person operating as a food warehouse or food processor, if the food warehouse or food processor contains or handles only uncut fruits or vegetables, or both, and meets all of the following criteria:

(i) The establishment is owned and operated by the person producing the fruits or vegetables, or both.

(ii) Activities at the establishment are limited to storing, grading, sorting, packing, washing, trimming, and refrigerating.

(iii) The fruits or vegetables, or both, are primarily from the person's own production, and the balance are products of the same genus or genera from other agricultural producers.

(iv) The food is not "potentially hazardous food (time/temperature control for safety food)" as defined in the food code.

(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.

(4) If prepackaged food is transported from a food establishment licensed under this chapter, to a sales location at a farmers' market, fair, or festival, the sales location is not required to be separately licensed and is considered an extension of the food establishment, if the food is transported and sold by employees of the food establishment.

Sec. 4111. (1) The department shall impose the following license fees for each year or portion of a year:

(a) Retail food establishment: \$67.00.

- (b) Extended retail food establishment: \$172.00.
- (c) Food processor: \$172.00.
- (d) Limited food processor: \$67.00.
- (e) Mobile food establishment: \$172.00.
- (f) Temporary food establishment: \$25.00.
- (g) Special transitory food unit: \$135.00.
- (h) Mobile food establishment commissary: \$172.00.
- (i) Food warehouse: \$67.00.
- (j) Food service establishment: the amounts described in subsection (2).

(2) If a local health department no longer conducts a food service program, the department, in consultation with the commission of agriculture and rural development, shall set the food sanitation fees to be imposed for the department's services performed under subsection (1)(j). The fees imposed shall equal, as nearly as possible, 1/2 of the department's cost of providing the service. The department may impose the service fees for up to 12 months after the date of cessation by the local health department. After the 12-month period, the department shall collect the fees only in the amount provided by amendment of this act or as authorized pursuant to an appropriation.

(3) Any license fee paid on an initial application is nonrefundable.

(4) The department may charge a convenience fee and collect from the applicant any additional costs associated with the method of fee payment for the license or permit fees described in this chapter, not to exceed the costs to the department.

Sec. 4114. (1) A person shall not act as a shellfish dealer unless the person has been certified as a shellfish dealer by the department. An application for shellfish dealer certification shall be submitted to the department on the forms approved by the department and shall contain the reasonable information required by the department to process the application. The applicant shall meet all of the following requirements:

- (a) Be the owner of the shellfish dealer or an officer of the legal entity owning the shellfish dealer.
- (b) Comply with the requirements of this act and rules.
- (c) Allow the director access to the shellfish dealer and records as required to determine compliance with the applicable requirements of this act and rules.
- (2) A shellfish dealer certification is valid from May 1 to April 30 of each year.
- (3) Each shellfish dealer shall have and implement a HACCP plan and have a program of sanitation monitoring and record keeping in compliance with the guide for the control of molluscan shellfish.

Sec. 4117. (1) Except as provided in subsections (2) and (3), money collected under this chapter by the department shall be credited to the dairy and food safety fund that is created as a restricted fund within the state treasury. The state treasurer may receive money or other assets, from appropriations or from any other source, for deposit into the fund. The state treasurer shall direct the investment of the fund. The money in the fund shall not lapse to the general fund at the end of the fiscal year and shall carry over to the following fiscal years. The state treasurer shall credit to the fund interest and earnings from fund investments. The department shall administer the fund and shall expend money from the fund for the purpose of administering this act and enforcing the provisions of this act, the grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540, and the manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740. The department shall be the administrator of the fund for auditing purposes.

(2) A consumer food safety education fund is created as a revolving fund in the department of treasury. The consumer food safety education fund shall be administered by the department and funded by adding \$3.00 to the fee for each food establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide statewide training and education to consumers on food safety. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(3) An industry food-safety education fund is created as a revolving fund in the department of treasury. The industry food-safety education fund shall be administered by the department and funded by adding \$2.00 to the fee for each food service establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide food safety training and education to food service establishment employees and agents of the director who enforce this act. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(4) As used in this section, "fee-exempt food establishment" means a food establishment exempt from all state and local food establishment license fees under section 3119(4) combined with an exemption from the local health department sanitation service fee under section 2444 of the public health code, MCL 333.2444.

Sec. 4123. (1) A food establishment license is not transferable as to the holder or the location.

(2) A shellfish dealer certificate is not transferable as to the holder or to the location.

(3) A bottled water registration is not transferable as to the holder or the location.

Sec. 4125. (1) Before a food establishment license, bottled water registration, or shellfish dealer certificate is issued, the director shall determine if the applicant meets the minimum requirements of this act and rules.

(2) After an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a food establishment license, a registration for bottled water, or a shellfish dealer certificate issued under this act for failure to comply with requirements of this act or a rule. A person whose food establishment license, registration for bottled water, or shellfish dealer certificate is revoked or suspended shall discontinue the sale and offering for sale of food, the bottled water, or shellfish, respectively, until he or she complies with this act and the director issues a new registration or removes the suspension.

(3) If a person's food establishment license is revoked for egregious violations under section 5101(a), (b), (c), or (k), the director may refuse to issue or reissue a license to any establishment in which that person has ownership or management interest for a period of 2 years after the revocation.

(4) Based upon facts submitted by a person familiar with those facts or upon information and belief alleging that an imminent threat to the public health, safety, or welfare exists, the director may summarily suspend a license, registration, or certificate issued under this act. A person whose license, registration, or certificate has been summarily suspended under this section may petition the director to dissolve the order. Upon receipt of such a petition, the director shall immediately schedule a hearing to decide whether to grant or deny the petition to dissolve. The presiding officer shall grant the requested relief dissolving the summary suspension order unless sufficient evidence is presented that an imminent threat to the public health, safety, or welfare exists requiring emergency action and continuation of the director's summary suspension order.

Sec. 4127. (1) After the regulatory authority receives a petition for a hearing from a license, registration, or certificate holder whose license, registration, or certificate is summarily suspended under section 4125, the proceedings shall be promptly commenced and determined as required by section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(2) This section does not prevent the regulatory authority's immediate reinstatement of a license, registration, or certificate when the regulatory authority determines the public health hazard or nuisance no longer exists.

Sec. 4129. (1) A license, registration, or certificate applicant may request a hearing regarding the regulatory authority's denial of a new or renewal license, registration, or certificate. A person desiring a hearing in response to a denial of a license, registration, or certificate shall submit a hearing request to the regulatory authority within 30 calendar days after the date of the denial.

(2) The regulatory authority shall afford a hearing within 30 days after receiving a written request for a hearing as specified in this section when the request demonstrates that there is a genuine and material issue of fact that justifies that a hearing be held.

(3) Hearings shall be conducted in an expeditious and impartial manner.

Sec. 5101. (1) A person shall not do or cause to be done any of the following:

(a) Manufacture, sell, deliver, hold, or offer for sale adulterated or misbranded food.

(b) Adulterate or misbrand food.

(c) Receive in commerce food that is adulterated or misbranded and deliver or proffer the delivery of that food for pay or otherwise.

(d) Sell, deliver for sale, hold for sale, or offer for sale food unless that person holds a license issued under chapter IV.

(e) Disseminate a false advertisement concerning food or a food establishment.

(f) Refuse to permit entry or evaluation, or to permit the taking of a sample, as authorized by section 2111.

(g) Give a false guaranty or undertaking concerning food, unless in good-faith reliance on a guaranty or undertaking to the same effect signed by and containing the name and address of the person from whom the food was received.

(h) Remove or dispose of seized or embargoed food in violation of section 2105.

(i) Alter, mutilate, destroy, obliterate, or remove all or part of the label or do any other act with respect to a food while the food is held for sale resulting in the food being adulterated or misbranded.

(j) Forge, counterfeit, simulate, or falsely represent, or without proper authority use any mark, stamp, tag, label, or other identification device authorized or required by this act or rules.



(k) Permit filthy or unsanitary conditions to exist in a food establishment in which food intended for human consumption is manufactured, received, kept, stored, served, sold, or offered for sale.

(l) Falsely identify a country, state, or other place of origin of food on a label, tag, or other document with intent to deceive or defraud.

(m) Fail to establish or maintain any record or make any report required under this act or the federal act, or refuse to permit access to or verification or copying of any such required record.

(n) Interfere with the director in the conduct of his or her responsibilities under this act.

(o) Make a false statement, representation, or certification in any application, report, plan, or other document that is required to be maintained under this act or rules.

(p) Remove a tag, seal, or mark placed by the director.

(q) Operate without a license, registration, permit, or endorsement.

(r) Violate a provision of this act or a rule.

(s) Operate as a shellfish dealer without a shellfish dealer certificate.

(t) If the person is a food establishment, permit Michigan bridge card access to food assistance program benefits unless the food establishment's inventory records match redemption files for Michigan bridge card usage for food assistance program benefits and 1 or more of the following apply:

(i) The food for sale includes, on a continuous basis, at least 3 varieties of foods in each of the following 4 staple food groups and perishable foods in at least 2 of the groups:

(A) Meat, poultry, or fish.

(B) Bread or cereal.

(C) Vegetables or fruits.

(D) Dairy products.

(ii) At least 50% of the total dollar amount of all retail sales, including food and nonfood items, fuel, and services at the food establishment is from the sale of food in any of the 4 staple food groups.

(2) Each day a violation of this section occurs is a separate violation of this section.

Sec. 5105. (1) Upon finding that a person violated a provision of this act or a rule promulgated under this act, the department may impose an administrative fine of not more than \$500.00 for the first offense and not more than \$1,000.00 for a second or subsequent offense and the actual costs of the investigation of the violation. Each day of a continuing violation is not considered a separate violation of this act or a rule promulgated under this act. The department shall not impose upon any licensee or registrant administrative fines in the aggregate amount of more than \$4,000.00 per location for a firm with annual gross receipts of \$500,000.00 or less and \$8,000.00 per location for a firm with annual gross receipts of over \$500,000.00 during any 12-month period.

(2) Administrative fines and costs collected under this section shall be deposited into the dairy and food safety fund.

(3) This section does not require the department to issue an administrative fine for minor violations of this act if the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

(4) The department shall not impose administrative fines for violations of the food code other than priority items, priority foundation items, or repeated violations that remain uncorrected beyond the time frame for correction specified under or agreed to, specified, or approved by the director under section 8-405.11(A) or (B) or 8-406.11(A) or (B) of the food code. The department shall not impose an administrative fine for a core item violation of the food code unless the violation is not corrected within 30 calendar days after the evaluation.

Sec. 6101. (1) Chapters 1 through 8 of the food code are incorporated by reference except as amended and modified as follows:

(a) Where provisions of this act and rules specify different requirements.

(b) Section 3-401.14 is modified to read as follows:

“3-401.14 Non-Continuous Cooking of Raw Animal Foods.

Raw animal foods that are cooked using a non-continuous cooking process shall be:

(A) Subject to an initial heating process that is no longer than 60 minutes in duration;<sup>P</sup>

(B) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food (time/temperature control for safety food) under paragraph 3-501.14(A);<sup>P</sup>

(C) After cooling, held frozen or cold, as specified for potentially hazardous food (time/temperature control for safety food) under paragraph 3-501.16(A)(2);<sup>P</sup>

(D) Prior to sale or service, cooked using a process that heats all parts of the food to a time/temperature specified in paragraph 3-401.11(A);<sup>P</sup>

(E) Cooled according to the time and temperature parameters specified for cooked potentially hazardous food (time/temperature control for safety food) under paragraph 3-501.14(A) if not either hot held as specified under paragraph 3-501.16(A), served immediately, or held using time as a public health control as specified under section 3-501.19 after complete cooking;<sup>P</sup> and

(F) Stored as follows:

(1) After initial heating but prior to cooking as specified under paragraph (D) of this section, separate from ready-to-eat foods as specified under paragraph 3-302.11;<sup>Pf</sup> and

(2) After initial heating, but prior to complete cooking, marked or otherwise identified as foods that must be cooked as specified under paragraph (D) of this section prior to being offered for sale or service.<sup>Pf</sup> The food may be identified in any effective manner provided that the marking system is disclosed to the regulatory authority upon request.”.

(c) Section 2-103.11(L) is modified to read as follows:

“Employees are properly trained in food safety as it relates to their assigned duties;<sup>Pf</sup> and”.

(2) The director, by rule, may adopt any changes or updates to the food code.

(3) The annexes of the food code are considered persuasive authority for interpretation of the food code.

Sec. 6107. (1) The director shall review plans and specifications received under section 6105 as soon as practicable after receipt to determine their completeness and adequacy. If a submission of complete plans and specifications is not reviewed within 30 business days of receipt, the plans and specifications shall be considered to have been determined to be complete and adequate. Thereafter, construction may proceed without the director's authorization. Approval of the plans and specifications by operation of law does not relieve the license applicant or license holder from compliance with other provisions of this act.

(2) If the director determines that plans and specifications are incomplete or inadequate, or both, he or she shall notify the license applicant or license holder in writing and shall request the submission of revised plans and specifications with appropriate corrections or additions. The director shall not approve the plans and specifications until he or she determines that the plans and specifications are complete and adequate and that the food establishment is designed in accordance with the food code and this act.

(3) Upon a determination that the plans and specifications are complete and adequate, the director shall mark the plans and specifications showing approval and the date of approval, shall notify the license applicant or license holder in writing of the approval, and shall authorize construction, conversion, alteration, or remodeling of the food establishment.

(4) Approval of plans and specifications by the director and authorization for construction pursuant to the food code, this act, and rules expire if construction, conversion, alteration, or remodeling has not commenced within 1 year from the date of approval or has been interrupted for 1 year or more since the date of approval. A license applicant or license holder may apply in writing to the director for an extension of the approval and construction authorization before the approval expires. The request for extension shall identify the project for which the approval and construction authorization were originally granted and the reason for requesting the extension. The director may require modification of the plans and specifications to incorporate updated food safety practices or requirements, where applicable, unless the license applicant or license holder has entered into binding agreements or contractual obligations which cannot be canceled or modified without substantial loss to the license applicant or license holder as determined by the director.

(5) The approved plans and specifications shall be kept on-site during construction and shall be available for inspection by the director.

Sec. 6129. (1) The director shall consider the risk-based evaluation methodology as described in food code annex 5, section 4 A-H for conducting evaluations of food establishments.

(2) The completed evaluation report shall specify a period of time for correction of noted violations. The license holder shall correct the violations within the time specified in the report.

(3) All violations which are marked as priority items or priority foundation items on the evaluation report form shall be corrected immediately unless otherwise specified. The director shall confirm corrections within 30 days after the report is issued. However, if not more than 2 priority foundation item violations are noted and the director determines that the violations are not a risk to food safety, the director may confirm correction of the priority foundation item violations at the next routine evaluation.

Sec. 6135. (1) The name and address of the business operating a mobile food establishment shall be affixed to each side of the exterior of the vehicle in letters not less than 3 inches high and 3/8 of an inch wide and shall be in contrast to the vehicle background color. When more than 1 mobile food service establishment is operated by the same person, the director shall assign a number to each establishment.

(2) A copy of limitations attached to the license of a mobile food service establishment shall be carried on the mobile food service establishment at all times.

(3) If a mobile food establishment is operating on a regularly scheduled route, the director may require the license holder to provide a copy of the route schedule when the license is approved and every time the route schedule is changed.

(4) The director or the operator in the presence of the director shall affix 2 decals provided by the department on the mobile food establishment at the time the license is issued. The decals shall be conspicuously displayed on each side of the mobile food establishment so as to be visible when in transit and while serving the public.

Sec. 7101. Subject to section 1119(2), a food processor and a food warehouse shall comply with 21 CFR part 110, except that refrigerated potentially hazardous food shall be stored at 4.4 degrees centigrade (40 degrees Fahrenheit) or below.

Sec. 7104. (1) @.02 of chapter I and chapters II, VII, IX to XIV, and XVI of the guide for control of molluscan shellfish are incorporated by reference except to the extent provisions of this act and rules specify different requirements.

(2) The director by rule may adopt any changes or updates to the guide for control of molluscan shellfish.

(3) The annexes of the guide for the control of molluscan shellfish are considered persuasive authority for interpretation of the guide for the control of molluscan shellfish.

Sec. 7112. (1) 21 CFR parts 1, 70, 73, 74, 81, 82, and 100 to 199, as set forth on the effective date of the amendatory act that added this section, are adopted by reference, except to the extent that provisions of this act and rules promulgated under this act specify different requirements.

(2) The director, by promulgation of a rule, may adopt any changes or updates to 21 CFR parts 1, 70, 73, 74, 81, 82, and 100 to 199.

Sec. 7113. As used in this chapter:

(a) "Added fat" means the addition of fat tissue originating from portions consisting of less than 12% muscle tissue in each portion.

(b) "Added water" means greater moisture content than normally found in meat and, except for poultry, is determined by total moisture minus 4 times the percentage of protein. Added water may be in the form of water or ice.

(c) "Artificial coloring" means coloring containing any dye or pigment which was manufactured by a process of synthesis or other similar artifice or by extraction of a natural dye or pigment from a plant or other material from which the dye or pigment was formed.

(d) "Artificial flavoring" means any flavoring containing any sapid or aromatic constituent manufactured by synthesis or similar process.

(e) "Binders" means food and nonfood substances used as an ingredient in comminuted meats for binding, stabilizing, thickening, or maintaining viscosity of the product.

(f) "By-products or variety meats" means hearts, livers, brains, tongues, tripe, stomach, lungs, melts, eyes, weasand meats, head meat, cheek meat, salivary glands, udder, lips, ears, snouts, skin, feet, spleens, slaughterhouse by-products, spinal cords, cracklings or crackling meal, packinghouse by-products, food processor by-products, partially defatted fatty tissues, and partially defatted chopped meat.

(g) "Candling" means the examination, in a partially darkened room or place, of the interior of an egg by twirling the egg before a bright light passing through an aperture in an opaque shield or by another approved method.

(h) "Comminuted" means chopped, diced, flaked, ground, or otherwise reduced to minute particles.

(i) "Extenders" means food substances used as an ingredient in comminuted meats primarily for replacement of meat ingredients.

(j) "Fat" means the quantity of adipose tissue determined by chemical analysis.

(k) "Fresh meat" means meat that has undergone no cooking, heating, or other processing except boning, cutting, comminuting, or freezing.

(l) "Lamb" means meat derived from sheep less than 1 year of age.

(m) "Meat" means the edible part of clean, sound striated muscle of cattle, swine, sheep, deer and other cervids, goat, turkey, duck, ratite, or chicken slaughtered in compliance with all applicable laws, with or without the accompanying and overlying fat, and sinew, nerve, gland, and blood vessels which normally accompany the muscle tissues and which are not separated from it in the process of dressing. Meat does not include specified risk materials.

(n) "Shellfish" means all species of any of the following:

(i) Oyster, clams, or mussels whether shucked or in the shell, raw, including postharvest processed, frozen or unfrozen, or whole or in parts.

- (ii) Scallops in any form, except when the final product form is the adductor muscle only.
- (o) "Skeletal meat" means the meat that is attached to a part of the skeleton, including head and cheek meat.
- (p) "Specified risk materials" means items, associated with the nervous system of beef cattle, that are prohibited from human food as defined in 9 CFR 310.22.
- (q) "Veal" means meat derived from a calf not more than 1 year of age.

Sec. 7114. (1) U.S. standards for shell eggs are adopted by reference.

(2) Eggs described by United States department of agriculture as black rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, stuck yolks, blood rings or embryos beyond blood ring stage, moldy eggs, musty eggs, bloody whites, crusted yolks, eggs with abnormal odors, and any eggs which contain wholly or in part a tainted, disease, filthy, decomposed, or putrid substance are eggs unfit for human food.

(3) A person shall not sell, offer, or expose for sale to the consumer or to the retail trade, or have in his or her possession with intent to sell to the consumer, or to the retail trade, any egg unfit for human food. Such an egg shall be broken out of the shell and denatured or destroyed by methods approved by the director so that it cannot be used for human food.

(4) The final determination of all grade and quality factors of an official sample of shell eggs from domesticated chickens shall be made by visual examination of the egg to determine cleanliness, soundness of shell, and exterior quality, and by candling or breaking to determine interior quality. The examination shall be made by a competent representative authorized by the director. The representative shall certify the results of the examination and his or her certificate shall be prima facie evidence of the facts certified to in any court where the certificate is offered in evidence.

(5) All eggs from domesticated chickens sold, offered, or exposed for sale, or advertised for sale by a retailer or wholesaler shall be marked as follows to conform to the following applicable size requirement:

(a) "Jumbo", if the eggs weigh at the rate of not less than 30 ounces per dozen, with no eggs below the rate of 29 ounces per dozen.

(b) "Extra large", if the eggs weigh at the rate of not less than 27 ounces per dozen, with no eggs below the rate of 26 ounces per dozen.

(c) "Large", if the eggs weigh at the rate of not less than 24 ounces per dozen, with no eggs below the rate of 23 ounces per dozen.

(d) "Medium", if the eggs weigh at the rate of not less than 21 ounces per dozen, with no eggs below the rate of 20 ounces per dozen.

(e) "Small", if the eggs weigh at the rate of not less than 18 ounces per dozen, with no eggs below the rate of 17 ounces per dozen.

(f) "Peewee", if the eggs weigh at the rate of not less than 15 ounces per dozen.

(6) All advertising of eggs shall include the correct unabbreviated size designation in describing eggs. The correct unabbreviated size designation shall also appear on the exterior of any container, open or closed, in which eggs are offered for sale to the retailer or the consumer.

(7) A person shall not by himself or herself or his or her agents sell, offer, or expose for sale, advertise, or in any manner represent for sale as strictly fresh, henery, new laid, best, grade A, number 1, fancy, special, extra, selected, direct from the farm, or under any word, figures, symbols, or description of similar import, any eggs which are not fresh. An egg is not considered fresh unless it meets the standards of quality specified for the U.S. AA or A quality, or the equivalent, as designated in U.S. standards for shell eggs for individual eggs or in standards prescribed by the director by rule.

(8) All eggs from domesticated chickens sold, offered or exposed for sale, or advertised for sale by a retailer or wholesaler shall be labeled or marked to conform to one of the following grade requirements:

(a) Eggs that fully meet the specifications of U.S. AA quality or fresh fancy quality, or the equivalent thereof, as described in U.S. standards for shell eggs, shall be labeled and advertised as grade AA or fresh fancy eggs, Michigan seal of quality eggs, grade A or grade B eggs.

(b) Eggs that fully meet the specifications of the U.S. A quality, or the equivalent thereof, as described in U.S. standards for shell eggs, shall be labeled and advertised as grade A or grade B eggs.

(c) Eggs that fully meet the specifications of a U.S. B quality, or the equivalent thereof, as described in U.S. standards for shell eggs, shall be labeled and advertised as grade B eggs.

(d) Eggs that do not meet the grade requirements of subdivision (a), (b), or (c) shall not be offered for sale or sold in the shell. Those eggs may be broken out of the shell at the grading plant or grading station or may be offered for sale or sold to an egg breaking plant.

(9) Eggs shall be held and transported at or below 45 degrees Fahrenheit ambient temperature beginning 36 hours after time of lay. If the eggs are to be processed as table eggs and are not processed for the ultimate consumer within 36 hours from the time of lay and, therefore, are held and transported as required at or below 45 degrees Fahrenheit

ambient temperature, then the eggs may be held at room temperature for no more than 36 hours just prior to processing to allow an equilibration step to temper the eggs.

(10) This act does not apply to a person who meets all of the following requirements:

- (a) Is directly responsible for producing eggs from fewer than 3,000 hens.
- (b) Only sells eggs directly to consumers or first receivers.
- (c) Only sells eggs in containers that each bear a label stating “packaged in a facility that has not been inspected by the department.”.
- (d) Does not sell eggs through the internet or by mail order or consignment.

Sec. 7133. (1) All products manufactured under terms of this chapter may be sold in colored artificial casings or containers only if the products are in complete compliance with all applicable regulations of the United States department of agriculture. These products shall not be sold in colored natural casings.

(2) In addition to the requirements of section 1105(1)(a), any product manufactured under the terms of this chapter is adulterated if it is the product of an animal which has died otherwise than by slaughter.

Sec. 7137. Food shall not contain unapproved food additives or additives that exceed amounts specified in 21 CFR parts 170 to 180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR parts 181 to 186, substances that exceed amounts established under applicable regulations of the United States department of agriculture food safety inspection service, or pesticide residues that exceed provisions specified in 40 CFR part 180.

Sec. 8107. (1) As used in this section:

(a) “Date” means 1 of the following:

- (i) For perishable food, the recommended last day of sale.
  - (ii) For nonperishable food, the recommended last day of sale or consumption, if any.
- (b) “Prepackaged” means packaged prior to being displayed or offered for sale.

(2) A retail food establishment shall not sell or offer for sale a prepackaged perishable food unless the package bears a label with a date identified by month and day, except that bakery products with a shelf life of 7 days or less may be dated with a day of the week or an abbreviation. A retail food establishment may sell or offer for sale a prepackaged nonperishable food with or without a label that bears a date.

(3) The date for prepackaged perishable food may be displayed with or without explanatory terms. If explanatory terms are used, the terms shall be limited to 1 of the following: “Sell by \_\_\_\_\_”, “Sell before \_\_\_\_\_”, “Last date of sale \_\_\_\_\_”, “Recommended last date of sale \_\_\_\_\_”, or “Recommended sale date \_\_\_\_\_”. Other meaningful terms may be used if specifically approved by the department.

(4) A retail food establishment shall not sell or offer for sale any of the following foods under the following circumstances:

- (a) After the date, meat that has been removed from a federally inspected retail package.
- (b) After the date, nonperishable food or prepackaged perishable food unless the food is wholesome and sound and is clearly identified as having passed the date.
- (c) Nonperishable food that is no longer wholesome or sound.
- (5) The retail or final seller is responsible for the proper advertisement of food sold after the date.
- (6) A person who prepackages nonperishable food and chooses to label the food with a date or who prepackages perishable food shall do all of the following:
  - (a) Establish a meaningful date that takes into consideration the food quality and characteristics of the food, its packaging, and customary conditions encountered in commercial channels.
  - (b) If the date is the recommended last day of sale, allow a reasonable period after the date for consumption of the food without physical spoilage.
  - (c) Keep a record of the method of determination of the date.
- (7) A retailer who purchases prepackaged perishable food may, upon written agreement with the person prepackaging such food, determine, identify, and be responsible for the date that each package of such food bears on a label.
- (8) The date shall not be altered. A person shall not rewrap or repack a food, in its original form and texture, with a date on the package different from the original.
- (9) If the date is the recommended last day of sale, the date shall be calculated to allow a reasonable period for the subsequent consumption of the food, but shall not allow for a period which would result in a health nuisance as described in section 2107.



(10) This section does not apply to fresh fruits and vegetables and frozen food and does not apply to milk and milk products dated in accordance with the grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540.

(11) The requirements of this section do not apply to any of the following:

(a) An individually packaged food item that is a component of a larger food item if the larger food item is identified with a date the same as or earlier than the date of that component.

(b) Perishable foods packaged under, and in compliance with, federal laws and regulations, if providing information equal to or greater than the information required by this section.

(c) Smoked fish under the smoked fish rules.

Enacting section 1. All of the following are repealed:

(a) Section 2103 of the food law of 2000, 2000 PA 92, MCL 289.2103.

(b) 1963 PA 244, MCL 289.321 to 289.336.

Enacting section 2. This amendatory act takes effect October 1, 2012.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

.....  
Governor