

HOUSE BILL NO. 6446

November 18, 2020, Introduced by Rep. Koleszar and referred to the Committee on Regulatory Reform.

A bill to require disclosure of the basis for representing food to be gluten-free; to prohibit the sale and distribution of food represented to be gluten-free that does not conform to the required disclosure; to prescribe fines and penalties and allow remedies; to require the promulgation of rules; and to provide for the powers and duties of certain state governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the

1 "gluten-free food consumer protection act".

2 Sec. 2. As used in this act:

3 (a) "Core item" means a provision in the food code that is not
4 designated as a priority item or priority foundation item and
5 relates to general sanitation, operational controls, sanitation
6 standard operating procedures, facilities or structures, equipment
7 design, or general maintenance.

8 (b) "Dealer" means an establishment that advertises,
9 represents, or holds itself out as selling, preparing, or
10 maintaining food as gluten-free, including, but not limited to, a
11 manufacturer, slaughterhouse, wholesaler, store, restaurant, hotel,
12 catering facility, butcher shop, summer camp, bakery, delicatessen,
13 supermarket, grocery store, nursing home, freezer dealer, or food
14 plan company. Dealer includes an establishment that sells,
15 prepares, or maintains food not represented as gluten-free in
16 addition to selling food represented as gluten-free.

17 (c) "Department" means the department of agriculture and rural
18 development.

19 (d) "Director" means the director of the department or the
20 director's designee.

21 (e) "Food" means a food, food product, food ingredient,
22 dietary supplement, or beverage.

23 (f) "Food code" means the "Food Code, 2017 Recommendations of
24 the United States Public Health Service, Food and Drug
25 Administration".

26 (g) "Gluten-free" means that term as used in 21 CFR 101.91.

27 (h) "Priority foundation item" means a provision of the food
28 code whose application supports, facilitates, or enables 1 or more
29 priority items and includes an item that requires the purposeful

1 incorporation of specific actions, equipment, or procedures by
2 industry management to attain control of risk factors that
3 contribute to foodborne illness or injury including, but not
4 limited to, personnel training, infrastructure or necessary
5 equipment, and labeling.

6 (i) "Priority item" means a provision of the food code whose
7 application contributes directly to the elimination, prevention, or
8 reduction to an acceptable level, hazards associated with foodborne
9 illness or injury that includes items with a quantifiable measure
10 to show control of hazards, such as cooking, reheating, cooling,
11 and handwashing.

12 Sec. 3. (1) A dealer that prepares, distributes, sells, or
13 exposes for sale food represented to be gluten-free, by use of that
14 term or any similar term indicating that the food is gluten-free,
15 shall disclose the basis upon which that representation is made by
16 posting a sign that describes the basis in a conspicuous place upon
17 the premises at which the food is prepared, distributed, sold, or
18 exposed for sale.

19 (2) A dealer shall not prepare, distribute, sell, or expose
20 for sale food represented to be gluten-free that does not conform
21 to the basis upon which that representation is made as it is posted
22 under subsection (1).

23 Sec. 4. (1) A dealer that fails to display the posting
24 required under section 3(1) is subject to an administrative fine of
25 not more than \$500.00 for a second or subsequent offense.

26 (2) A dealer that violates section 3(2) as a second or
27 subsequent offense is guilty of a misdemeanor under section
28 297g(4) (d) of the Michigan penal code, 1931 PA 328, MCL 750.297g.

29 (3) A person aggrieved by a violation of section 3(2) may, in

1 addition to, and distinct from any other remedy at law or equity,
2 bring a private cause of action for damages resulting from the
3 violation, including, but not limited to, economic, noneconomic, or
4 consequential damages.

5 (4) A dealer does not violate section 3(2) if it is shown by a
6 preponderance of the evidence that the dealer relied in good faith
7 upon the representations of a manufacturer, processor, packer, or
8 distributor of food represented to be gluten-free.

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

14 (6) The department shall not impose an administrative fine for
15 a violation of this act other than priority items, priority
16 foundation items, or repeated violations that remain uncorrected
17 beyond the time frame agreed to, specified, or approved by the
18 director. The department shall not impose an administrative fine
19 for a core item violation of this act unless the violation is not
20 corrected within 30 calendar days after an evaluation conducted by
21 the department.

22 Sec. 5. The department shall promulgate rules for the
23 administration and enforcement of this act under the administrative
24 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
25 including, but not limited to, rules concerning the format, size,
26 and placement of the sign required under section 3 and the
27 information that must be included in the disclosure required by
28 that section.

29 Enacting section 1. This act takes effect 90 days after the

1 date it is enacted into law.

2 Enacting section 2. This act does not take effect unless

3 Senate Bill No. _____ or House Bill No. 6447 (request no. 02652'19 *)

4 of the 100th Legislature is enacted into law.