

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 730**

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1105 and 2129 (MCL 289.1105 and 289.2129), as
amended by 2012 PA 178, and by adding section 6152.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1105. (1) As used in this act:

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

4 (i) It bears or contains any poisonous or deleterious substance
5 that may render it injurious to health unless the substance is not
6 an added substance and the quantity of that substance in the food
7 does not ordinarily render it injurious to health.

8 (ii) It bears or contains any added poisonous or added
9 deleterious substance, other than a substance that is a pesticide

1 chemical in or on a raw agricultural commodity; a food additive; or
2 a color additive considered unsafe within the meaning of subsection
3 (2).

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

7 (iv) It bears or contains any food additive considered unsafe
8 within the meaning of subsection (2). However, if a pesticide
9 chemical has been used in or on a raw agricultural commodity in
10 conformity with an exemption granted or limitation prescribed under
11 subsection (2) and the raw agricultural commodity has been
12 subjected to processing, the residue of that pesticide chemical
13 remaining in or on that processed food is, notwithstanding the
14 provisions of subsection (2) and this subdivision, not considered
15 unsafe if that residue in or on the raw agricultural commodity has
16 been removed to the extent possible in good manufacturing practice
17 and if the concentration of that residue in the processed food when
18 ready to eat is not greater than the tolerance prescribed for the
19 raw agricultural commodity.

20 (v) It is or contains a new animal drug or conversion product
21 of a new animal drug that is unsafe within the meaning of section
22 360b of the federal act, 21 USC 360b.

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

26 (vii) It has been produced, prepared, packed, or held under
27 unsanitary conditions in which it may have become contaminated with

1 filth or in which it may have been rendered diseased, unwholesome,
2 or injurious to health.

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

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

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

16 (xi) It is confectionery and has partially or completely
17 imbedded in it any nonnutritive object except if, as provided by
18 rules, the object is of practical functional value to the
19 confectionery product and would not render the product injurious or
20 hazardous to health; it is confectionery and bears or contains any
21 alcohol other than alcohol not in excess of 1/2 of 1% by volume
22 derived solely from the use of flavoring extracts; or it is
23 confectionery and bears or contains any nonnutritive substance
24 except a nonnutritive substance such as harmless coloring, harmless
25 flavoring, harmless resinous glaze not in excess of 4/10 of 1%,
26 harmless natural wax not in excess of 4/10 of 1%, harmless natural
27 gum and pectin or any chewing gum by reason of its containing

1 harmless nonnutritive masticatory substances which is in or on the
2 confectionery by reason of its use for some practical functional
3 purpose in the manufacture, packaging, or storage of such
4 confectionery if the use of the substance does not promote
5 deception of the consumer or otherwise result in adulteration or
6 misbranding in violation of this act. For the purpose of avoiding
7 or resolving uncertainty as to the application of this subdivision,
8 the director may issue rules allowing or prohibiting the use of
9 particular nonnutritive substances.

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

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

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

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

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

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

9 (e) "Color additive" means a dye, pigment, or other substance
10 that is made by a process of synthesis or similar artifice or is
11 extracted, isolated, or otherwise derived, with or without
12 intermediate or final change of identity from a vegetable, animal,
13 mineral, or other source, or when added or applied to a food or any
14 part of a food is capable alone or through reaction with other
15 substances of imparting color to the food. Color additive does not
16 include any material that is exempt or hereafter is exempted under
17 the federal act. This subdivision does not apply to any pesticide
18 chemical, soil or plant nutrient, or other agricultural chemical
19 solely because of its effect in aiding, retarding, or otherwise
20 affecting, directly or indirectly, the growth of other natural
21 physiological process of produce of the soil and thereby affecting
22 its color, whether before or after harvest. Color includes black,
23 white, and intermediate grays.

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

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

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

9 (i) "Core item" means a provision in the food code that is not
10 designated as a priority item or a priority foundation item. Core
11 item includes ~~an~~ **BOTH OF THE FOLLOWING:**

12 (A) **AN** item that usually relates to general sanitation,
13 operational controls, sanitation standard operating procedures
14 (SSOPs), facilities or structures, equipment design, or general
15 maintenance.

16 (B) **THE REQUIREMENTS OF SECTION 2129(2) AND 6152(1).**

17 (j) "Cottage food operation" means a person who produces or
18 packages cottage food products only in a kitchen of that person's
19 primary domestic residence within this state.

20 (k) "Cottage food product" means a food that is not
21 potentially hazardous food as that term is defined in the food
22 code. Examples of cottage food product include, but are not limited
23 to, jams, jellies, dried fruit, candy, cereal, granola, dry mixes,
24 vinegar, dried herbs, and baked goods that do not require
25 temperature control for safety. Cottage food product does not
26 include any potentially hazardous food regulated under 21 CFR parts
27 113 and 114, examples of which include, but are not limited to,

1 meat and poultry products; salsa; milk products; bottled water and
2 other beverages; and home-produced ice products. Cottage food
3 product also does not include canned low-acid fruits or acidified
4 vegetables and other canned foods except for jams, jellies, and
5 preserves as defined in 21 CFR part 150.

6 (2) Any added poisonous or deleterious substance, food
7 additive, pesticide chemical in or on a raw agricultural commodity,
8 or color additive is considered unsafe for the purpose of
9 subsection (1)(a), unless there is in effect a federal regulation
10 or exemption from regulation under the federal act, the federal
11 meat inspection act, 21 USC 601 to 683, the poultry products
12 inspection act, 21 USC 451 to 472, or another federal statute, or a
13 rule limiting the quantity of the substance, and the use or
14 intended use of the substance, and the use or intended use of the
15 substance conforms to the terms prescribed by the federal
16 regulation or exemption or the rule.

17 Sec. 2129. (1) ~~All~~ **SUBJECT TO SUBSECTION (2), ALL** of the
18 following food establishments shall employ a minimum of 1
19 managerial employee **AS A FOOD SAFETY MANAGER** who is currently
20 certified under a personnel certification program accredited by the
21 American national standards institute, utilizing the conference for
22 food protection standards:

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

25 (i) ~~Operating under a~~ **A LICENSED** temporary food service
26 establishment. ~~license.~~

27 (ii) A vending machine. ~~location.~~

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1 (b) An extended retail food establishment.

2 (c) ~~Operated~~ A FOOD SERVICE ESTABLISHMENT OPERATED within a
3 retail grocery.

4 (2) BEGINNING 2 YEARS AFTER THE EFFECTIVE DATE OF THE 2014
5 AMENDATORY ACT THAT AMENDED THIS SECTION AND EVERY 5 YEARS
6 THEREAFTER, A CERTIFIED FOOD SAFETY MANAGER WHO SUPERVISES THE
7 OPERATIONS OF A FOOD SERVICE ESTABLISHMENT SHALL HAVE COMPLETED A
8 FOOD SAFETY TRAINING PROGRAM[]

9 CONTAINING AN ALLERGEN AWARENESS COMPONENT THAT HAS BEEN APPROVED
10 BY THE DEPARTMENT. [THE ALLERGEN AWARENESS COMPONENT MAY BE AN ONLINE
PROGRAM OR A VIDEO.] HOWEVER, A CERTIFIED FOOD SAFETY MANAGER AT A
11 FOOD SERVICE ESTABLISHMENT WITH MORE THAN 20 LOCATIONS WITHIN THIS
12 STATE MAY SATISFY THIS REQUIREMENT BY COMPLETING ANY NATIONALLY
13 RECOGNIZED FOOD SAFETY TRAINING PROGRAM CONTAINING AN ALLERGEN
14 AWARENESS COMPONENT. A FOOD SERVICE ESTABLISHMENT SHALL RETAIN
15 RECORDS ON THE SITE OF THE FOOD SERVICE ESTABLISHMENT DOCUMENTING
16 COMPLIANCE OF ITS CERTIFIED FOOD SAFETY MANAGERS WITH THIS
17 SUBSECTION. THE DEPARTMENT SHALL ENFORCE THIS SUBSECTION IN THE
18 SAME MANNER THAT IT ENFORCES OTHER PROVISIONS RELATED TO CERTIFIED
19 FOOD SAFETY MANAGERS. THIS SUBSECTION APPLIES UNTIL DECEMBER 31,
20 2020.

21 (3) ~~(2)~~—An individual certified under subsection (1) shall be
22 recognized with full faith and credit by the state and all local
23 units of government throughout the state.

24 (4) ~~(3)~~—The department may promulgate rules to do all of the
25 following:

26 (a) Develop requirements for retail food establishments to
27 follow when employing certified food safety managers or personnel.

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

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

9 (d) Implement and enforce the requirements ~~described in~~
10 **DEVELOPED UNDER** subdivision (a).

11 (5) ~~(4)~~—The certification program developed by the American
12 national standards institute, as it exists on April 1, 2008, is
13 incorporated by reference. The department may adopt updates to the
14 certification program accreditation standards in subsection (1) by
15 rule.

16 (6) ~~(5)~~—This section does not prohibit any local legislative
17 body from implementing a food handler program, an employee health
18 certification program, or a manager certification program, if it is
19 not in conflict with this section.

20 **SEC. 6152. (1) UNTIL DECEMBER 31, 2020, EACH FOOD SERVICE**
21 **ESTABLISHMENT IN THIS STATE SHALL PROMINENTLY DISPLAY IN THE STAFF**
22 **AREA A POSTER DEVELOPED AND APPROVED BY THE DEPARTMENT RELATIVE TO**
23 **FOOD ALLERGY AWARENESS THAT INCLUDES, BUT IS NOT LIMITED TO,**
24 **INFORMATION REGARDING THE RISK OF AN ALLERGIC REACTION, OR POST THE**
25 **INFORMATION FROM THE POSTER IN A DIFFERENT, READABLE NOTICE IN THE**
26 **STAFF AREA.**

27 (2) **THE DEPARTMENT MAY PROMULGATE RULES TO CARRY OUT THIS**

1 SECTION.

2 (3) THIS SECTION DOES NOT ESTABLISH OR CHANGE ANY PRIVATE
3 CAUSE OF ACTION. THIS SECTION DOES NOT CHANGE ANY DUTY UNDER ANY
4 OTHER STATUTE OR THE COMMON LAW, EXCEPT AS THIS SECTION EXPRESSLY
5 PROVIDES.