

Act No. 516  
Public Acts of 2014  
Approved by the Governor  
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**STATE OF MICHIGAN**  
**97TH LEGISLATURE**  
**REGULAR SESSION OF 2014**

**Introduced by Senators Emmons, Hune, Smith, Nofs, Pappageorge, Jones, Marleau, Brandenburg, Ananich and Warren**

**ENROLLED SENATE BILL No. 730**

AN ACT to amend 2000 PA 92, entitled "An act to codify the licensure and regulation of certain persons engaged in processing, manufacturing, production, packing, preparing, repacking, canning, preserving, freezing, fabricating, storing, selling, serving, or offering for sale food or drink for human consumption; to prescribe powers and duties of the department of agriculture; to provide for delegation of certain powers and duties to certain local units of government; to provide exemptions; to regulate the labeling, manufacture, distribution, and sale of food for protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of foods in violation of this act; to provide standards for food products and food establishments; to provide for enforcement of the act; to provide penalties and remedies for violation of the act; to provide for fees; to provide for promulgation of rules; and to repeal acts and parts of acts," by amending sections 1105 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:*

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 both of the following:

(A) An item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

(B) The requirements of section 2129(2) and 6152(1).

(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. 2129. (1) Subject to subsection (2), all of the following food establishments shall employ a minimum of 1 managerial employee as a food safety manager who is currently certified under a personnel certification program accredited by the American national standards institute, utilizing the conference for food protection standards:

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

(i) A licensed temporary food service establishment.

(ii) A vending machine.

(b) An extended retail food establishment.

(c) A food service establishment operated within a retail grocery.

(2) Beginning 2 years after the effective date of the 2014 amendatory act that amended this section and every 5 years thereafter, a certified food safety manager who supervises the operations of a food service establishment shall have completed a food safety training program containing an allergen awareness component that has been approved by the department. The allergen awareness component may be an online program or a video. However, a certified food safety manager at a food service establishment with more than 20 locations within this state may satisfy this requirement by completing any nationally recognized food safety training program containing an allergen awareness component. A food service establishment shall retain records on the site of the food service establishment documenting compliance of its certified food safety managers with this subsection. The department shall enforce this subsection in the same manner that it enforces other provisions related to certified food safety managers. This subsection applies until December 31, 2020.

(3) 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.

(4) 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 developed under subdivision (a).

(5) 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.

(6) 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. 6152. (1) Until December 31, 2020, each food service establishment in this state shall prominently display in the staff area a poster developed and approved by the department relative to food allergy awareness that includes, but is not limited to, information regarding the risk of an allergic reaction, or post the information from the poster in a different, readable notice in the staff area.

(2) The department may promulgate rules to carry out this section.

(3) This section does not establish or change any private cause of action. This section does not change any duty under any other statute or the common law, except as this section expressly provides.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor