

Act No. 129
Public Acts of 1992
Approved by the Governor
June 30, 1992
Filed with the Secretary of State
June 30, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Randall, Bender, Ouwinga, London, Gnodtke, Brackenridge, DeLange, Dalman,
Strand and McBryde

ENROLLED HOUSE BILL No. 4278

AN ACT to amend the title of Act No. 39 of the Public Acts of 1968, entitled "An act to regulate the 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 for enforcement of the act; to provide penalties for violation of the act; and to repeal certain acts and parts of acts," as amended, being sections 289.701 to 289.727 of the Michigan Compiled Laws; and to add sections 22a, 22b, 22c, 22d, 22e, 22f, 22g, 22h, 22i, 22j, 22k, 22l, and 22m.

The People of the State of Michigan enact:

Section 1. The title of Act No. 39 of the Public Acts of 1968, as amended, being sections 289.701 to 289.727 of the Michigan Compiled Laws, is amended and sections 22a, 22b, 22c, 22d, 22e, 22f, 22g, 22h, 22i, 22j, 22k, 22l, and 22m are added to read as follows:

TITLE

An act to regulate the 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 prescribe the powers and duties of certain state departments and persons; to provide for enforcement of the act; to provide penalties and remedies for violation of the act; and to repeal certain acts and parts of acts.

Sec. 22a. As used in this section and sections 22b to 22l:

(a) "Approved source" means a water supply approved by the department of public health and in compliance with the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws, and all applicable rules promulgated under this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(b) "Artesian well water" means water that is forced from below the ground to the surface through a well by natural underground pressure.

(c) "Bottled water" means water that is placed in a sealed container and offered for sale for drinking, cooking, or other purposes involving a likelihood of the water being ingested by humans. Bottled water includes,

but is not limited to, water that is dispensed by a water vending machine or retail water facility. Bottled water may be with or without natural or added carbonation and may be prepared with added flavors, extracts, or essences derived from a spice or fruit and comprising less than 1% by weight of the final product, or a combination thereof. Bottled water does not include products that contain sweeteners, acidulants, or additives other than the flavors, extracts, or essences.

(d) "Carbonated" or "carbonation added" or "carbon dioxide added" means water that contains carbon dioxide other than that naturally occurring in the source product, whether the carbonation is obtained from a different natural source or a manufactured source.

(e) "Declaration of identity" means the product name or description that identifies the type of water.

(f) "Demineralized water" means water from an approved source that has been demineralized by distillation, deionization, reverse osmosis, or other method and contains not more than 10 parts per 1,000,000 total dissolved solids.

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

(h) "Distillation" means the process of vaporization and then condensation.

(i) "Distilled water" means purified water that is produced by distillation.

(j) "Imminent hazard" means that in the judgment of the director there is a violation, or a condition that may cause a violation, of the state drinking water standards requiring immediate action to prevent endangering the health of people.

(k) "Mineralized water" or "mineral added water" means water to which mineral solids have been added that contains not less than 300 parts per 1,000,000 total dissolved solids.

(l) "Mineral water" means water that naturally contains not less than 300 parts per 1,000,000 total dissolved solids.

(m) "Multiple-service container" means a container intended to be used more than 1 time.

(n) "Naturally carbonated" or "naturally sparkling" means water that contains carbon dioxide as it emerges from the source and is bottled directly with its entrapped gas or water from which the carbon dioxide gas is mechanically separated and later reintroduced into the water at the time of bottling at a level not higher than the level that naturally occurs in the water.

(o) "Natural water" means groundwater that has not been modified in its chemical composition and is not derived from a municipal system or public water supply and has undergone no more than a minimum treatment process consisting of filtration by activated carbon or particulate, or both, and disinfection by ultraviolet treatment or ozonization, or both.

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

(q) "Purified water" means water that is produced by distillation, deionization, ion exchange, reverse osmosis, or an equivalent process and that contains not more than 10 parts per 1,000,000 total dissolved solids and no added substance.

(r) "Sparkling" means water that contains carbon dioxide other than that naturally occurring in the source product, whether the carbonation is obtained from a different natural source or a manufactured source.

(s) "Spring water" means water that is derived from an underground formation from which water flows naturally to the surface of the earth. Spring water may be collected through a bore hole and transported by pipes, tunnels, or similar devices. Spring water collected with the assistance of external force shall retain the physical properties of the water that flows through the natural opening.

(t) "Unprocessed public drinking water" means water from a public water system that is unprocessed by a bottler or vendor.

(u) "Water dispensing machine" means any customer self-service device that is used to dispense water into a container for a fee. Water dispensing machine does not include a device licensed under the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws.

(v) "Well" means an approved casing properly installed in an opening in the earth's surface for the purpose of removing potable water.

(w) "Well water" means natural water that is taken from below the ground through a well.

Sec. 22b. Bottled soda water and seltzer water that have a declaration of identity other than listed in section 22d are exempt from the requirements of this section and sections 22a to 22l.

Sec. 22c. (1) Bottled water shall be obtained from an approved source and meet the quality standards prescribed in 21 C.F.R. 103.35 and the state drinking water standards established in the safe drinking water

act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws, except that mineral water and mineralized water may contain more total dissolved solids than the limitation specified in 21 C.F.R. 103.35(d).

(2) A copy of the current sanitary survey report from the department of public health under the safe drinking water act, Act No. 399 of the Public Acts of 1976, and the water sample results required under that act shall be available at the bottling plant for the director to demonstrate approval of the source and supply of the water.

(3) Bottled water shall not contain any substance in excess of the maximum contaminant level adopted for drinking water under the safe drinking water act, Act No. 399 of the Public Acts of 1976.

(4) An analysis to determine the concentration of a contaminant under subsection (3) shall be conducted in accordance with the applicable methods established in the safe drinking water act, Act No. 399 of the Public Acts of 1976.

(5) Except for purified water, a bottler shall include on the label of each container of bottled water sold in this state the amount, per serving, of sodium and potassium in the container. A label shall not identify water as sodium free unless it contains less than 20 milligrams per liter or less than 5 milligrams per 8 ounce serving.

Sec. 22d. (1) Subject to subsections (2) through (10), bottled water shall be identified in labeling and advertising by 1 of the following declarations of identity established under this section:

- (a) Artesian well water.
- (b) Artesian spring water.
- (c) Demineralized water.
- (d) Distilled water.
- (e) Mineral added water.
- (f) Mineral water.
- (g) Mineralized water.
- (h) Purified water.
- (i) Spring water.
- (j) Unprocessed public drinking water.
- (k) Well water.

(2) Subject to section 22e(3), artesian well water shall be labeled “artesian well water”, “artesian drinking water”, or “well water”.

(3) Carbonated water shall be labeled “carbonated”, “carbonation added”, or “carbon dioxide added”. The word “sparkling” may be used as a prefix to the product name of water described in this subsection.

(4) Naturally carbonated water shall be labeled “naturally carbonated” or “naturally sparkling”.

(5) Demineralized water shall be labeled “demineralized water”, and the name shall be accompanied by the phrase “prepared by _____”, with the blank filled in with the method of preparation in letters not less than 1/2 the height of the letters used in the name.

(6) Mineral water shall be labeled “mineral water”. Mineral water shall be labeled with the total dissolved solids in parts per 1,000,000. Mineral water shall be labeled with the statement, “percentage of U.S. recommended daily allowance (U.S. RDA)” followed by a statement of the amount per serving of calcium, iron, phosphorus, magnesium, copper, and zinc, or shall be labeled with the statement, “contains 0% of the U.S. recommended daily allowance (U.S. RDA) for calcium, iron, phosphorus, magnesium, copper, and zinc.”

(7) Mineralized water shall be labeled “mineralized water” or “mineral added water”. Mineralized water shall be labeled with the total dissolved solids in parts per 1,000,000. Mineralized water shall be labeled with the statement, “percentage of U.S. recommended daily allowance (U.S. RDA)” followed by a statement of the amount per serving of calcium, iron, phosphorus, magnesium, copper, and zinc, or shall be labeled with the statement, “contains 0% of the U.S. recommended daily allowance (U.S. RDA) for calcium, iron, phosphorus, magnesium, copper, and zinc.”

(8) Purified water shall be labeled “purified water”, and the name shall be accompanied by the phrase “prepared by _____”, with the blank filled in with the method of preparation in letters not less than 1/2 the height of the letters used in the name, except that purified water produced by distillation may be labeled “distilled water”.

(9) Spring water shall be labeled “spring water”. The word “spring” shall not be used to describe water that is not spring water.

(10) Well water shall be labeled “well water”.

Sec. 22e. (1) The term "spring", "spring water", "artesian", "well", or "natural" shall not be used in a brand name on labels, if the water was obtained from a source other than stated or implied by the brand name.

(2) If the word "spring", "well", "artesian", "mineral", "natural", or any derivative of those words appears in the company name or trademark, the typeface of the declaration of identity on the product label shall be at least equal in size to the company name or trademark, whichever is larger, shall be in the same type style and color, and shall have the same background of contrasting color as other words in the company name.

(3) Water that is spring water and artesian well water may be labeled "artesian spring water".

(4) Bottled water that has more than 1 applicable declaration of identity under section 22d may be identified by 1 or more applicable declarations of identity if the bottled water as identified is not a misleading characterization of the basic nature or property of the water.

(5) Water that is natural may be labeled with the word "natural" as a prefix to the declaration of identity.

(6) A claim of a medical or health-giving property shall not be used in a label or in an advertisement for bottled water.

(7) An analysis conducted to determine compliance with this section and sections 22b and 22d shall be made according to the methods described in 21 C.F.R. 103.35.

Sec. 22f. (1) Each principal display panel on all containers of bottled water shall clearly and conspicuously provide all of the following information:

(a) The declaration of identity of the product as provided in section 22d.

(b) The name and address of the manufacturer or distributor.

(c) A declaration regarding carbon dioxide, if required, preceding or following the identity of the product in letters that are not less than 1/2 of the height of those in the product name.

(2) The declaration of sodium content, if required, shall appear on the principal display panel or the information panel. The statement shall be complete on that panel and shall be printed in not less than 1/16-inch type.

(3) Detectable levels, as determined by the United States environmental protection agency, of synthetic organic compounds identified in the safe drinking water act, Act No. 399 of the Public Acts of 1976, being sections 325.1001 to 325.1023 of the Michigan Compiled Laws, in the bottled water shall be declared on the product label in parts per billion.

(4) The information panel of the label shall be immediately contiguous and to the right of the principal display panel as observed by an individual facing the principal display panel.

(5) Supplemental printed information and graphics concerning recognized uses of the water may appear on the label, but shall not imply properties of the product or preparation methods that are not factual or are prohibited by law.

(6) The principal display panel shall be large enough to accommodate all required label information in a clear and conspicuous manner without obscuring the design or vignettes and without crowding. If more than 1 principal display panel is on a package, each principal display panel shall provide all of the information required under this section.

(7) A water dispensing machine shall be clearly and conspicuously labeled with the declaration of identity of the product dispensed.

Sec. 22g. A person shall not operate a bottled water plant or bottle water for the purpose of sale or distribution in this state without first demonstrating to the department of agriculture that the source, bottling facility, treatment and bottling practices pursuant to 21 C.F.R. part 129, and product water meet the requirements of sections 22a to 22k.

Sec. 22h. (1) Each bottled water plant operator shall develop and maintain procedures for notification of the department, consumer notification, and product recall and shall implement any of these procedures as necessary with respect to a product for which the operator or department knows or has reason to believe circumstances exist that may adversely affect its safety for the consumer. In order to facilitate product identification or recall, each bottled water product shall contain a code that is designed to remain affixed to the container during use and which contains either the date of manufacture or a lot or batch number.

(2) A bottled water supplier who knows that a primary maximum contaminant level has been exceeded or has reason to believe that circumstances exist that may adversely affect the safety of bottled water, including, but not limited to, source contamination, spills, accidents, natural disasters, or breakdowns in treatment, shall promptly notify the department.

(3) If the department determines based upon representative samples, risk analysis, information provided by the bottled water supplier, and other information available to the department, that the circumstances present an imminent hazard to the public health and that a form of consumer notice or product recall can effectively avoid or significantly minimize the threat to public health, the department may order the water supplier to initiate a level of product recall approved by the department or, if appropriate, issue a form of notification to customers. The bottled water supplier is responsible for disseminating the notice in a manner designed to inform customers who may be affected by the problem. The bottled water plant operator, if appropriate, shall provide the notice to radio and television media or to the newspaper serving the affected public or, in the alternative, shall directly notify affected users where doing so in a manner provided by the department can effectively avoid or minimize the risk to health. Product recalls shall conform to the procedures and policies of 21 C.F.R. part 1.

(4) Where a maximum contaminant level has been exceeded but the department determines that circumstances, including risk analysis and representative samples, indicate that the exceedance of the maximum contaminant level has been promptly corrected and that already distributed product will not cause illness and presents no significant health risk, a recall and media notification of consumers is unnecessary. In these circumstances where a recall or media notification is unnecessary but there may be significant consumer complaints of product taste or odor, the department may order the bottled water plant operator to communicate the exceedance of the maximum contaminant levels and the implementation of corrective measures by direct mailings to affected customers.

Sec. 22i. (1) A water bottler or water dispensing machine owner shall register with the department each brand of bottled water with a unique declaration of identity and each water dispensing machine before the sale or offering for sale of the water. The application for registration shall be made on a form prescribed by the department and shall include both of the following:

(a) The proposed label or placard for the water.

(b) For each year or portion of a year, a fee of \$25.00 for each brand of bottled water with a unique declaration of identity and \$25.00 for each water dispensing machine.

(2) The registration required by subsection (1) expires annually on July 31 and shall be renewed before August 1 of each year.

(3) The department shall assess a late fee of \$25.00 for bottled water or water from a water dispensing machine that is sold or offered for sale without registration. For the first year this section is in effect, the department shall assess a late fee if the registration has not been obtained within 4 months after the effective date of the amendatory act that added this section. A registration is not effective until the late fee is paid.

(4) A bottled water that is not registered is considered misbranded.

(5) A person shall not place into a container a product other than the registered brand and registered product described on that registered label. This subsection does not prohibit a person from refilling a container with any bottled water if the registered brand name on the label has been obliterated or removed from the container.

Sec. 22j. Bottled water that contains a substance at a level higher than allowed under this act is adulterated food.

Sec. 22k. Upon the request of a bottled water plant operator, the director may grant permission for the bottled water plant operator to continue to use existing stocks of labels for a period not to exceed 12 months from the effective date of the amendatory act that added this section.

Sec. 22l. (1) After an opportunity for a hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, the director may revoke or suspend a registration issued under this act for any violation of this act.

(2) A person who has had the registration of a bottled water revoked or suspended shall discontinue the sale or offering for sale of the bottled water until he or she complies with this act and the director grants a new registration or removes the suspension.

Sec. 22m. (1) The director shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, regulating the sale, manufacture, transportation, and storage of ice used for human consumption or food preservation which shall include, but not be limited to, the following:

(a) Requirements of the principal display panel, including the weight, place of manufacture, and date of manufacture.

(b) Sampling requirements, including standards for independent sampling.

(c) Sanitary requirements for the manufacturing, storage, and transportation stages, including both equipment and plant facilities.

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.....

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Governor.