

Act No. 338
Public Acts of 2008
Approved by the Governor
December 23, 2008
Filed with the Secretary of State
December 23, 2008
EFFECTIVE DATE: December 23, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Walker, Elsenheimer, Sheltrown, Palsrok, Hansen, Booher, Ball, Stahl and Mayes

ENROLLED HOUSE BILL No. 5679

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 1107 (MCL 289.1105 and 289.1107), as amended by 2007 PA 113.

The People of the State of Michigan enact:

Sec. 1105. 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 except that, if the substance is not an added substance, the food is not considered adulterated if 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 subparagraph (v).

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

(iv) It bears or contains any food additive considered unsafe within the meaning of subparagraph (v) provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subparagraph (v) 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 subparagraph (v) and this subdivision, not be 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) Any added poisonous or deleterious substance, any food additive, and pesticide chemical in or on a raw agricultural commodity, or any color additive is considered unsafe for the purpose of application of this definition, unless there is in effect a federal regulation or exemption from regulation under the federal act, meat inspection act, poultry product inspection act, or other federal acts, or a rule adopted under this act 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 rule.

(vi) 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.

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

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

(ix) 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.

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

(xi) 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.

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

(xiii) It is or bears or contains any color additive that is unsafe within the meaning of subparagraph (v).

(xiv) 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.

(xv) 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 processing plant 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(n)(ii), at no extra cost to its transient tenants. A bed and breakfast is not considered a food service establishment if exempt under section 1107(n)(ii) or (iii).

(e) "Color additive" means a dye, pigment, or other substance made by process of synthesis or similar artifice or 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 substance 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) "Contaminated with filth" means contamination applicable to any food not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(g) “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.

(h) “Critical violation” or “critical item” means a violation of the food code that the director determines is more likely than other violations to contribute to food contamination, illness to humans, or environmental health hazard.

Sec. 1107. As used in this act:

(a) “Department” means the Michigan department of agriculture.

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

(c) “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.

(d) “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.

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

(f) “Federal act” means the federal food, drug, and cosmetic act, 21 USC 301 to 397.

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

(h) “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 471, or the meat inspection act of March 4, 1907, chapter 2907, 34 Stat. 1258.

(i) “Food code” means food code, 2005 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.

(j) “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 a food processing plant, 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.

(k) “Food processing plant” means a food establishment that processes, manufactures, packages, labels, or stores food and does not provide food directly to a consumer. Food processing plant does not include a maple syrup producer.

(l) “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.

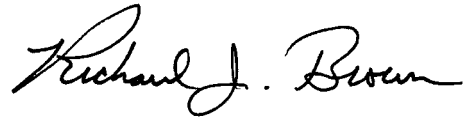
(m) “Food safety audit” means the methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices for compliance with this act, accompanied by a report of findings. Food safety audit includes checking or testing, or both, of observable practices and procedures to determine compliance with standards contained in or adopted by this act, accompanied by a report of findings.

(n) “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

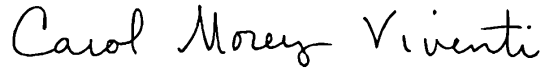
feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking 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, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.
- (iii) A bed and breakfast that has at least 11 but fewer than 15 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.
- (o) "Food warehouse" means a food establishment that stores or distributes prepackaged food for wholesaling.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor