

Legislative Analysis



FOOD LAW UPDATE

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House Bill 5130

Sponsor: Rep. Cindy Denby

Committee: Agriculture

Complete to 11-8-11

A SUMMARY OF HOUSE BILL 5130 AS INTRODUCED 10-27-11

The bill would amend the Food Law of 2000 (2000 PA 92) to incorporate changes in the 2009 federal Food Code. Among the major changes from the currently adopted Code:

- Employees must be trained in food allergy awareness.
- Children cannot order undercooked burgers from the children's menu.
- Cut tomatoes and cut leafy greens are considered potentially hazardous and must be temperature controlled for safety.
- Standards for how to safely par-cook foods.
- Violations have been scientifically ranked in one of three categories based on their risk for causing foodborne illnesses.

The bill makes many changes to the Food Code. Among other things, the bill would:

**** Stipulate that a violation by a food establishment of Section 12603 or 12905 of the Public Health Code is not a critical violation of the Food Code.** Generally speaking, these sections prohibit smoking in public places and food service establishments. The act requires the findings of an evaluation of a food service establishment to be recorded on an evaluation report. The report must identify those items considered to be critical from a public health standpoint.

**** Allow the director to decline to issue multiple temporary food establishment licenses for the same establishment within a given calendar year.**

**** Exempt a person operating as a food warehouse or food processor containing only uncut fruits or vegetables from licensure under the act, provided all of the following criteria are met:**

- The establishment is owned and operated by the person producing the fruits or vegetables, or both.
- Activities at the establishment are limited to storing, grading, sorting, packing, washing, trimming, and refrigerating.
- The fruits or vegetables, or both, are primarily from the person's own production, and the balance are products of the same genus or genera from other agricultural producers.

- The food is not "potentially hazardous food (time/temperature control for safety food)" as defined in the Food Code.

** Specify that, if prepackaged food is transported from a food establishment to a sales location at a farmers' market, fair, or festival, the sales location is not required to be separately licensed and is considered an extension of the food establishment, if the food is transported and sold by employees of the food establishment.

** Prohibit anyone from operating as a shellfish dealer without being certified as a shellfish dealer by the department. The applicant would be required to:

- Be the owner of the shellfish dealer or an officer of the legal entity owning the shellfish dealer.
- Comply with the requirements of the act and rules.
- Allow the director access to the proposed shellfish dealer and records as required to determine compliance with the applicable requirements of the act and rules.

Certification would be valid from May 1 to April 30 of each year. Each firm would be required to have and implement a HACCP plan and have a program of sanitation monitoring and record keeping in compliance with the Guide for the Control of Molluscan Shellfish.

** Eliminate language establishing an advisory committee to advise the department on the use of funds in the Consumer Food Safety Education Fund.

** Prohibit the transfer of a shellfish dealer certificate and a bottled water registration.

** Add the following items in Section 5101, which lists numerous activities that a person is prohibited from doing or causing to be done. The bill would add the following prohibited items:

- Operating as an interstate shellfish dealer without a shellfish dealer certificate.
- If the person is a food establishment, permitting Michigan bridge card access to food assistance program benefits unless the food establishment's inventory records match redemption files for Michigan bridge card usage for food assistance program benefits and one or more of the following apply:
 - The food for sale includes, on a continuous basis, at least three varieties of foods in each of the following four staple food groups and perishable foods in at least two of the following groups: meat, poultry, or fish; bread or cereal; vegetables or fruits; dairy products
 - At least 50% of the total dollar amount of all retail sales, including food and nonfood items, fuel, and services at the food establishment is from the sale of food in any of the four staple food groups.

** Modify a section of the federal Food Code that has been incorporated by reference. The bill would modify Section 3 to read:

3-401.14 Non Continuous Cooking of Raw Animal Foods.

Raw animal foods that are cooked using a non-continuous cooking process must be (1) subject to an initial heating process that is no longer than 60 minutes in duration, (2) immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food, (3) after cooling, held frozen or cold, as specified for potentially hazardous food, (4) prior to sale or service, cooked using a process that heats all parts of the food to a time/temperature specified in the code, (5) cooled according to the time and temperature parameters specified for cooked potentially hazardous food and stored according to the parameters in the bill.

** Incorporate by reference provisions of the Guide for Control of Molluscan Shellfish. The director would be permitted to adopt, by rule, any changes or updates to the guide. The annexes of the guide are considered persuasive authority for interpretation of the guide.

** Adopt by reference 21 CFR parts 1, 70, 73, 74, 81, 82, and 100-199 and allow the director to adopt any changes or updates by promulgation of rules.

** Repeal 1963 PA 244 (MCL 289.321 to 289.336), the state's Egg Law, and incorporate new language related to eggs into the Food Code. The bill would incorporate U.S. standards for shell eggs by reference.

- Provide for eggs that are unfit for human food.
- Prohibit the sale, offer, or possession with the intent to sell any egg that is unfit for human food. Eggs of this nature would have to be broken out of the shell and destroyed by methods approved by the director.
- Provide that the final determination of all grade and quality factors of an official sample of shell eggs from domesticated chickens must be made by visual examination to determine cleanliness, soundness of shell, and exterior quality. The examination must be made by a competent representative authorized by the director and the representative must certify the results of the examination.
- Require all eggs from domesticated chickens sold, offered, or advertised for sale to be marked as follows to conform to the following applicable size requirement:
 - "Jumbo" -- if the eggs weigh at the rate of not less than 30 ounce per dozen, with no eggs below the rate of 29 ounces per dozen.
 - "Extra Large" -- if the eggs weigh at the rate of not less than 27 ounces per dozen, with no eggs below the rate of 26 ounces per dozen.
 - "Large" -- if the eggs weigh at the rate of not less than 24 ounces per dozen, with no eggs below the rate of 23 ounces per dozen.
 - "Medium" -- if the eggs weigh at the rate of not less than 21 ounces per dozen with no eggs below 20 ounces per dozen.

- "Small" -- if the eggs weigh 18 ounces per dozen and no eggs weigh below 17 ounces per dozen.
 - "Pee wee" -- if the eggs weigh less than 15 ounces per dozen.
- All advertising of eggs must include the correct unabbreviated size designation. It must also appear on the exterior of any container in which eggs are offered for sale.
- Prohibit anyone from selling, offering for sale, advertising, or representing for sale as fresh, hennery, new laid, best, grade A, or description of similar import, any eggs that are not fresh. An egg cannot be considered fresh unless it meets the standards of quality as designated in the U.S. standards for shell eggs or in standards prescribed by the director.
- All eggs from domesticated chickens sold by a retailer or wholesaler must be labeled or marked to conform to the grade requirements contained in the bill.
- Require eggs to be held and transported at or below 45 degrees Fahrenheit beginning 36 hours after time of lay. If the eggs are to be processed as table eggs and are not processed for the ultimate consumer within 36 hours from the time of lay and are held and transported as required then the eggs may be held at room temperature for no more than 36 hours just prior to processing to allow an equilibration stop to temper the eggs.

** Stipulate that food cannot, rather than may not, contain unapproved food additives or additives that exceed specified amounts.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.