

SENATE BILL No. 122

February 9, 2017, Introduced by Senator O'BRIEN and referred to the Committee on Agriculture.

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1105, 3113, and 6101 (MCL 289.1105, 289.3113, and 289.6101), section 1105 as amended by 2014 PA 516, section 3113 as amended by 2016 PA 188, and section 6101 as amended by 2012 PA 178.

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 **ADDED** poisonous or **ADDED**
5 deleterious substance that may render it injurious to health unless
6 ~~the substance is not an added substance and~~ the quantity of that
7 substance in the food does not ordinarily render it injurious to
8 health.

1 (ii) It bears or contains any added poisonous or added
2 deleterious substance, other than a substance that is a pesticide
3 chemical in or on a raw agricultural commodity; a food additive; or
4 a color additive considered unsafe within the meaning of subsection
5 (2).

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

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

22 (v) It is or contains a new animal drug or conversion product
23 of a new animal drug that is unsafe within the meaning of section
24 360b of the federal act, 21 USC 360b.

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

1 (vii) It has been produced, prepared, packed, or held under
2 unsanitary conditions in which it may have become contaminated with
3 filth or in which it may have been rendered diseased, unwholesome,
4 or injurious to health.

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

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

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

18 (xi) It is confectionery and has partially or completely
19 imbedded in it any nonnutritive object except if, as provided by
20 rules, the object is of practical functional value to the
21 confectionery product and would not render the product injurious or
22 hazardous to health; it is confectionery and bears or contains any
23 alcohol other than alcohol not in excess of ~~1/2 of 1%~~ 0.5% by
24 volume derived solely from the use of flavoring extracts; or it is
25 confectionery and bears or contains any nonnutritive substance
26 except a nonnutritive substance such as harmless coloring, harmless
27 flavoring, harmless resinous glaze not in excess of ~~4/10 of 1%,~~

1 0.4%, harmless natural wax not in excess of ~~4/10 of 1%, 0.4%~~,
2 harmless natural gum and pectin or any chewing gum by reason of its
3 containing harmless nonnutritive masticatory substances which is in
4 or on the confectionery by reason of its use for some practical
5 functional purpose in the manufacture, packaging, or storage of
6 such confectionery if the use of the substance does not promote
7 deception of the consumer or otherwise result in adulteration or
8 misbranding in violation of this act. For the purpose of avoiding
9 or resolving uncertainty as to the application of this subdivision,
10 the director may issue rules allowing or prohibiting the use of
11 particular nonnutritive substances.

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

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

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

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

24 (c) "Agricultural use operation" means a maple syrup
25 production facility or similar food establishment that finishes a
26 raw commodity and is integral to the agricultural production of,
27 and is located at, a farm. An agricultural use operation is not

1 considered a food processor or retail processing operation for
2 purposes of personal or real property but must meet those same
3 standards and licensing requirements as prescribed in this act.

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

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

27 (f) "Consumer" means an individual who is a member of the

1 public, takes possession of food, is not functioning in the
2 capacity of an operator of a food establishment or food processor,
3 and does not offer the food for resale.

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

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

12 (i) "Core item" means a provision in the food code that is not
13 designated as a priority item or a priority foundation item. Core
14 item includes ~~both~~ **ANY** of the following:

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

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

20 **(C) THE REQUIREMENTS OF SECTION 6101(1)(D).**

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

24 (k) "Cottage food product" means a food that is not
25 potentially hazardous food as that term is defined in the food
26 code. Examples of cottage food product include, but are not limited
27 to, jams, jellies, dried fruit, candy, cereal, granola, dry mixes,

1 vinegar, dried herbs, and baked goods that do not require
2 temperature control for safety. Cottage food product does not
3 include any potentially hazardous food regulated under 21 CFR parts
4 113 and 114, examples of which include, but are not limited to,
5 meat and poultry products; salsa; milk products; bottled water and
6 other beverages; and home-produced ice products. Cottage food
7 product also does not include canned low-acid fruits or acidified
8 vegetables and other canned foods except for jams, jellies, and
9 preserves as defined in 21 CFR part 150.

10 (2) ~~Any~~ **AN** added poisonous or deleterious substance, food
11 additive, pesticide chemical in or on a raw agricultural commodity,
12 or color additive is considered unsafe for the purpose of
13 subsection (1)(a), unless there is in effect a federal regulation
14 or exemption from regulation under the federal act, the federal
15 meat inspection act, 21 USC 601 to ~~683~~, **695**, the **FEDERAL** poultry
16 **AND POULTRY** products inspection act, 21 USC 451 to 472, or another
17 federal statute, or a rule limiting the quantity of the substance,
18 and the use or intended use of the substance, and the use or
19 intended use of the substance conforms to the terms prescribed by
20 the federal regulation or exemption or the rule.

21 Sec. 3113. (1) A county, city, village, or township shall not
22 regulate those aspects of food service establishments that are
23 subject to regulation under this act except to the extent necessary
24 to carry out the responsibility of a local health department to
25 implement licensing provisions of chapter IV. **IN ADDITION, A LOCAL**
26 **UNIT OF GOVERNMENT MAY ADOPT AND ENFORCE AN ORDINANCE THAT IS MORE**
27 **RESTRICTIVE THAN SECTION 6-501.115(B) (6) OF THE FOOD CODE AS SET**

1 FORTH IN SECTION 6101(1) (D) .

2 (2) This chapter does not relieve the applicant for a license
3 or a licensee from responsibility for securing a local permit or
4 complying with applicable local codes, regulations, or ordinances
5 not in conflict with this act.

6 Sec. 6101. (1) Chapters 1 through 8 of the food code are
7 incorporated by reference except as amended and modified as
8 follows:

9 (a) Where provisions of this act and rules specify different
10 requirements.

11 (b) Section 3-401.14 is modified to read as follows:

12 "3-401.14 Non-Continuous Cooking of Raw Animal Foods.

13 Raw animal foods that are cooked using a non-continuous
14 cooking process shall be:

15 (A) Subject to an initial heating process that is no longer
16 than 60 minutes in duration;^P

17 (B) Immediately after initial heating, cooled according to the
18 time and temperature parameters specified for cooked potentially
19 hazardous food (time/temperature control for safety food) under
20 paragraph 3-501.14 (A) ;^P

21 (C) After cooling, held frozen or cold, as specified for
22 potentially hazardous food (time/temperature control for safety
23 food) under paragraph 3-501.16 (A) (2) ;^P

24 (D) Prior to sale or service, cooked using a process that
25 heats all parts of the food to a time/temperature specified in
26 paragraph 3-401.11 (A) ;^P

27 (E) Cooled according to the time and temperature parameters

1 specified for cooked potentially hazardous food (time/temperature
2 control for safety food) under paragraph 3-501.14(A) if not either
3 hot held as specified under paragraph 3-501.16(A), served
4 immediately, or held using time as a public health control as
5 specified under section 3-501.19 after complete cooking;^P and

6 (F) Stored as follows:

7 (1) After initial heating but ~~prior to~~ **BEFORE** cooking as
8 specified under paragraph (D) of this section, separate from ready-
9 to-eat foods as specified under ~~paragraph~~ **SECTION** 3-302.11;^{Pf} and

10 (2) After initial heating, but ~~prior to~~ **BEFORE** complete
11 cooking, marked or otherwise identified as foods that must be
12 cooked as specified under paragraph (D) of this section ~~prior to~~
13 **BEFORE** being offered for sale or service.^{Pf} The food may be
14 identified in any effective manner provided that the marking system
15 is disclosed to the regulatory authority upon request."

16 (c) Section 2-103.11(L) is modified to read as follows:

17 "Employees are properly trained in food safety as it relates
18 to their assigned duties;^{Pf} and".

19 (D) **SECTION 6-501.115(B) IS MODIFIED BY THE ADDITION OF**
20 **SUBPARAGRAPH (6) THAT READS AS FOLLOWS:**

21 "(6) A DOG THAT IS CONTROLLED BY A CUSTOMER IN AN OUTDOOR
22 DINING AREA OF A FOOD SERVICE ESTABLISHMENT IF ALL OF THE FOLLOWING
23 APPLY:

24 (A) A HEALTH OR SAFETY HAZARD WILL NOT RESULT FROM THE
25 PRESENCE OR ACTIVITIES OF THE DOG.

26 (B) ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

27 (I) THE DOG DOES NOT PASS THROUGH THE INTERIOR OF THE FOOD

1 SERVICE ESTABLISHMENT OR ANY PLAYGROUND AREA OF THE FOOD SERVICE
2 ESTABLISHMENT TO ENTER THE OUTDOOR DINING AREA. A SEPARATE ENTRANCE
3 MUST BE PROVIDED FROM THE EXTERIOR OF THE FOOD SERVICE
4 ESTABLISHMENT TO THE OUTDOOR DINING AREA.

5 (II) THE OUTDOOR DINING AREA IS MAINTAINED FREE OF VISIBLE DOG
6 HAIR, DOG DANDER, AND OTHER DOG-RELATED WASTE AND DEBRIS. THE
7 OUTDOOR DINING AREA IS CLEANED AND DISINFECTED APPROPRIATELY AS
8 NEEDED.

9 (III) SURFACES CONTAMINATED BY THE WASTE CREATED FROM THE
10 DOG'S BODILY FUNCTIONS ARE IMMEDIATELY CLEANED AND DISINFECTED.

11 (IV) EQUIPMENT USED TO CLEAN AND THAT COMES IN CONTACT WITH
12 WASTE FROM A DOG'S BODILY FUNCTIONS IS STORED SEPARATE FROM ALL
13 OTHER CLEANING EQUIPMENT AND IS NOT USED FOR OTHER CLEANING
14 PURPOSES.

15 (V) ALL DOG WASTE IS DISPOSED OF AT LEAST DAILY
16 OUTSIDE OF THE FOOD SERVICE ESTABLISHMENT IN A COVERED WASTE
17 RECEPTACLE.

18 (VI) AN EMPLOYEE WHO TOUCHES THE DOG OR CLEANS WASTE FROM THE
19 DOG'S BODILY FUNCTIONS DOES NOT SERVE FOOD OR BEVERAGES OR HANDLE
20 TABLEWARE UNTIL THE EMPLOYEE HAS WASHED HIS OR HER HANDS.

21 (VII) THE DOG IS NOT ALLOWED ON A SEAT, CHAIR, OR
22 CUSTOMER'S LAP, OR ALLOWED TO CONTACT A TABLETOP, COUNTERTOP, OR
23 SIMILAR SURFACE IN THE OUTDOOR DINING AREA.

24 (VIII) THE DOG IS NOT ALLOWED TO CONTACT REUSABLE TABLEWARE
25 UNLESS THE TABLEWARE IS DEDICATED TO USE BY DOGS AND READILY
26 DISTINGUISHABLE AS SUCH OR IS PROVIDED BY THE CUSTOMER HANDLING THE
27 DOG.

1 (IX) THE DOG IS NOT ALLOWED IN AN AREA WHERE FOOD IS PREPARED.

2 (X) THE DOG IS NOT UNATTENDED.

3 (XI) THE CUSTOMER IS 18 YEARS OF AGE OR OLDER.

4 (XII) THE CUSTOMER KEEPS THE DOG ON A LEASH.

5 (C) THE FOOD SERVICE ESTABLISHMENT DOES ALL OF THE FOLLOWING:

6 (I) MAINTAINS AT THE FOOD SERVICE ESTABLISHMENT AND MAKES
7 AVAILABLE TO THE REGULATORY AUTHORITY OR A CUSTOMER UPON REQUEST
8 WRITTEN PROCEDURES THAT ENSURE COMPLIANCE WITH THE REQUIREMENTS OF
9 SUB-SUBPARAGRAPH (B).

10 (II) BEFORE ALLOWING A DOG WITHIN THE FOOD SERVICE
11 ESTABLISHMENT, NOTIFIES THE LOCAL HEALTH DEPARTMENT IN WRITING THAT
12 THE FOOD SERVICE ESTABLISHMENT INTENDS TO ALLOW CUSTOMERS' DOGS TO
13 ACCOMPANY CUSTOMERS IN THE OUTDOOR DINING AREA OF THE FOOD SERVICE
14 ESTABLISHMENT. THE FOOD SERVICE ESTABLISHMENT SHALL MAIL THE NOTICE
15 BY FIRST-CLASS MAIL OR DELIVER THE NOTICE NOT LESS THAN 30 DAYS
16 BEFORE ALLOWING DOGS TO ACCOMPANY CUSTOMERS. THE NOTICE IS
17 EFFECTIVE WHILE THE FOOD SERVICE ESTABLISHMENT REMAINS IN BUSINESS.
18 THE FOOD SERVICE ESTABLISHMENT IS NOT REQUIRED TO MAIL OR DELIVER
19 MORE THAN 1 NOTICE.

20 (D) THE FOOD SERVICE ESTABLISHMENT MAY DO ANY OF THE
21 FOLLOWING:

22 (I) DETERMINE THE LOCATION AND THE AMOUNT OF SPACE DESIGNATED
23 FOR A CUSTOMER ACCOMPANIED BY THE CUSTOMER'S DOG.

24 (II) ESTABLISH A LIMIT ON THE SIZE AND TYPE OF DOG AND ANY
25 OTHER LIMITATION RELATING TO A CUSTOMER'S DOG.

26 (III) DENY ENTRY TO OR EJECT FROM THE FOOD SERVICE
27 ESTABLISHMENT A CUSTOMER AND THE CUSTOMER'S DOG."

1 (2) THE OWNER OF A DOG BROUGHT INTO A FOOD SERVICE
2 ESTABLISHMENT UNDER SUBSECTION (1) (D) IS LIABLE FOR ANY DAMAGE OR
3 INJURY TO THE FOOD SERVICE ESTABLISHMENT, AN EMPLOYEE OF THE FOOD
4 SERVICE ESTABLISHMENT, OR A CUSTOMER OF THE FOOD SERVICE
5 ESTABLISHMENT CAUSED BY THE DOG.

6 (3) ~~(2)~~—The director, by rule, may adopt any changes or
7 updates to the food code.

8 (4) ~~(3)~~—The annexes of the food code are ~~considered~~ persuasive
9 authority for interpretation of the food code.

10 Enacting section 1. This amendatory act takes effect 90 days
11 after the date it is enacted into law.