

HOUSE BILL NO. 4514

March 16, 2021, Introduced by Rep. Hornberger and referred to the Committee on Commerce and Tourism.

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

1 ~~apply~~**as applied to food:**

2 (i) It bears or contains ~~any~~**an added** poisonous or **added**
3 deleterious substance that may render it injurious to health unless
4 ~~the substance is not an added substance and~~ the quantity of that
5 substance in the food does not ordinarily render it injurious to
6 health.

7 (ii) It bears or contains ~~any~~**an** added poisonous or added
8 deleterious substance, other than a substance that is a pesticide
9 chemical in or on a raw agricultural commodity, ~~+~~**a** food additive,
10 ~~+~~**or** a color additive considered unsafe within the meaning of
11 subsection (2).

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

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

28 (v) It is or contains a new animal drug or conversion product
29 of a new animal drug that is unsafe within the meaning of section

1 ~~360b-512~~ of the federal act, 21 USC 360b.

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

5 (vii) It has been produced, prepared, packed, or held under
6 unsanitary conditions ~~in which it~~ **and** may have become contaminated
7 with filth or ~~in which it may have been~~ rendered diseased,
8 unwholesome, or injurious to health.

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

12 (ix) Its container is composed, in whole or in part, of ~~any a~~
13 poisonous or deleterious substance that may render the contents
14 injurious to health.

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

22 (xi) It is confectionery and ~~has~~ **is** partially or completely
23 imbedded ~~in it~~ **with a** nonnutritive object except if, as
24 provided by rules, the object is of practical functional value to
25 the confectionery product and would not render the product
26 injurious or hazardous to health; it is confectionery and bears or
27 contains any alcohol other than alcohol not in excess of ~~1/2 of 1%~~
28 **0.5%** by volume derived solely from the use of flavoring extracts;
29 or it is confectionery and bears or contains ~~any a~~ nonnutritive

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

15 (xii) It is, ~~or bears~~, or contains ~~any a~~ color additive that is
16 unsafe within the meaning of subsection (2).

17 (xiii) It ~~has been~~ **is** intentionally subjected to radiation,
18 unless the use of the radiation ~~was~~ **is** in conformity with a rule or
19 exemption under this act or a regulation or exemption under the
20 federal act.

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

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

27 (c) "Agricultural use operation" means a maple syrup
28 production facility or similar food establishment that finishes a
29 raw commodity and is integral to the agricultural production of,

1 and is located at, a farm. An agricultural use operation is not
2 considered a food processor or retail processing operation for
3 purposes of personal or real property but must meet those same
4 standards and licensing requirements ~~as prescribed in~~ **under** this
5 act.

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

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

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

1 public ~~that~~ takes possession of food, ~~is~~**does** not ~~functioning~~
 2 **function** in the capacity of an operator of a food establishment or
 3 food processor, 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.~~**contaminants.**

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

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

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

20 (ii) ~~(B)~~The requirements of ~~section~~**sections** 2129(2) and
 21 6152(1) .

22 (iii) **The requirements of section 6101(1)(d) .**

23 (j) "Cottage food operation" means ~~a person~~**an individual** who
 24 produces or packages cottage food products only in a kitchen of
 25 that ~~person's~~**individual's** primary domestic residence within this
 26 state.

27 (k) "Cottage food product" means a food that is not
 28 potentially hazardous food as that term is defined in the food
 29 code. ~~Examples of cottage~~**Cottage** food product ~~include,~~**includes,**

but ~~are~~**is** 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 **of the following**:

(i) **Any** potentially hazardous food regulated under 21 CFR parts 113 and 114, ~~examples of which include, including,~~ 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~~

(ii) **Canned** low-acid fruits. ~~or acidified~~

(iii) **Acidified** vegetables. ~~and other~~

(iv) **Other** canned foods except for jams, jellies, and preserves as **those terms are** defined in 21 CFR part 150.

(2) ~~Any~~**An** added poisonous or **added** 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. 3113. (1) ~~A~~**Except as otherwise provided in this subsection, a** county, city, village, or township shall not regulate those aspects of **a** food service ~~establishments~~**establishment** that are subject to regulation under this act except to the extent necessary to carry out the responsibility of a local health

department to implement **the** licensing provisions of chapter IV. **A local unit of government may adopt and enforce an ordinance that is more restrictive than section 6-501.115(B) (6) of the food code as set forth in section 6101(1) (d) .**

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

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

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

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

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

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

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

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

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

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

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

(F) Stored as follows:

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

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

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

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

(d) Section 6-501.115(B) is modified by the addition of subparagraph (6) that reads as follows:

"(6) A dog that is controlled by a customer in an outdoor dining area of a food service establishment if all of the following apply:

(a) A health or safety hazard will not result from the presence or activities of the dog.

(b) All of the following requirements are met:

(i) The dog does not pass through the interior of the food service establishment or any playground area of the food service

1 establishment to enter the outdoor dining area. A separate entrance
2 must be provided from the exterior of the food service
3 establishment to the outdoor dining area.

4 (ii) The outdoor dining area is maintained free of visible dog
5 hair, dog dander, and other dog-related waste and debris. The
6 outdoor dining area is cleaned and disinfected appropriately as
7 needed.

8 (iii) Surfaces contaminated by the waste created from a dog's
9 bodily functions are immediately cleaned and disinfected.

10 (iv) Equipment used to clean and that comes in contact with
11 waste from a dog's bodily functions is stored separate from all
12 other cleaning equipment and is not used for other cleaning
13 purposes.

14 (v) All dog waste is disposed of at least daily outside of the
15 food service establishment in a covered waste receptacle.

16 (vi) An employee who touches the dog or cleans waste from the
17 dog's bodily functions does not serve food or beverages or handle
18 tableware until the employee has washed his or her hands.

19 (vii) The dog is not allowed on a seat, chair, or customer's
20 lap, or allowed to contact a tabletop, countertop, or similar
21 surface in the outdoor dining area.

22 (viii) The dog is not allowed to contact reusable tableware
23 unless the tableware is dedicated to use by dogs and readily
24 distinguishable as such or is provided by the customer handling the
25 dog.

26 (ix) The dog is not allowed in an area where food is prepared.

27 (x) The dog is not unattended.

28 (xi) The customer is 18 years of age or older.

29 (xii) The customer keeps the dog on a leash.

1 (c) The food service establishment does all of the following:

2 (i) Maintains at the food service establishment and makes
3 available to the regulatory authority or a customer on request,
4 written procedures that ensure compliance with the requirements of
5 sub-subparagraph (b) .

6 (ii) Before allowing a dog within the food service
7 establishment, notifies the local health department in writing that
8 the food service establishment intends to allow customers' dogs to
9 accompany customers in the outdoor dining area of the food service
10 establishment. The food service establishment shall mail the notice
11 by first-class mail or deliver the notice not less than 30 days
12 before allowing dogs to accompany customers. The notice is
13 effective while the food service establishment remains in business.
14 The food service establishment is not required to mail or deliver
15 more than 1 notice.

16 (d) The food service establishment may do any of the
17 following:

18 (i) Determine the location and the amount of space designated
19 for a customer accompanied by the customer's dog.

20 (ii) Establish a limit on the size and type of dog and any
21 other limitation relating to a customer's dog.

22 (iii) Deny entry or eject from the food service establishment
23 a customer and the customer's dog."

24 (2) The owner of a dog brought into a food service
25 establishment under subsection (1)(d) is liable for any damage or
26 injury to the food service establishment, an employee of the food
27 service establishment, or a customer of the food service
28 establishment caused by the dog.

29 (3) ~~(2)~~—The director, by rule, may adopt any changes or

- 1 updates to the food code.
- 2 **(4)** ~~(3)~~—The annexes of the food code are ~~considered~~ persuasive
- 3 authority for interpretation of the food code.