

FOOD LAW (EXCERPT)

Act 92 of 2000

CHAPTER V

PROHIBITED ACTS AND PENALTIES

289.5101 Prohibited acts; violation.

Sec. 5101. (1) A person shall not do or cause to be done any of the following:

- (a) Manufacture, sell, deliver, hold, or offer for sale adulterated or misbranded food.
- (b) Adulterate or misbrand food.
- (c) Receive in commerce food that is adulterated or misbranded and deliver or proffer the delivery of that food for pay or otherwise.
- (d) Sell, deliver for sale, hold for sale, or offer for sale food unless that person holds a license issued under chapter IV.
- (e) Disseminate a false advertisement concerning food or a food establishment.
- (f) Refuse to permit entry or evaluation, or to permit the taking of a sample, as authorized by section 2111.
- (g) Give a false guaranty or undertaking concerning food, unless in good-faith reliance on a guaranty or undertaking to the same effect signed by and containing the name and address of the person from whom the food was received.
- (h) Remove or dispose of seized or embargoed food in violation of section 2105.
- (i) Alter, mutilate, destroy, obliterate, or remove all or part of the label or do any other act with respect to a food while the food is held for sale resulting in the food being adulterated or misbranded.
- (j) Forge, counterfeit, simulate, or falsely represent, or without proper authority use any mark, stamp, tag, label, or other identification device authorized or required by this act or rules.
- (k) Permit filthy or unsanitary conditions to exist in a food establishment in which food intended for human consumption is manufactured, received, kept, stored, served, sold, or offered for sale.
- (l) Falsely identify a country, state, or other place of origin of food on a label, tag, or other document with intent to deceive or defraud.
- (m) Fail to establish or maintain any record or make any report required under this act or the federal act, or refuse to permit access to or verification or copying of any such required record.
- (n) Interfere with the director in the conduct of his or her responsibilities under this act.
- (o) Make a false statement, representation, or certification in any application, report, plan, or other document that is required to be maintained under this act or rules.
- (p) Remove a tag, seal, or mark placed by the director.
- (q) Operate without a license, registration, permit, or endorsement.
- (r) Violate a provision of this act or a rule.
- (s) Operate as a shellfish dealer without a shellfish dealer certificate.
- (t) If the person is a food establishment, permit 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 1 or more of the following apply:
 - (i) The food for sale includes, on a continuous basis, at least 3 varieties of foods in each of the following 4 staple food groups and perishable foods in at least 2 of the groups:
 - (A) Meat, poultry, or fish.
 - (B) Bread or cereal.
 - (C) Vegetables or fruits.
 - (D) Dairy products.
 - (ii) 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 4 staple food groups.
- (2) Each day a violation of this section occurs is a separate violation of this section.

History: 2000, Act 92, Eff. Nov. 8, 2000;—Am. 2007, Act 114, Eff. Apr. 1, 2008;—Am. 2012, Act 178, Eff. Oct. 1, 2012.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

“Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

“(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered compliance with this act.

“(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act.”

289.5103 Misleading labeling or advertisement; liability of disseminator of information.

Sec. 5103. (1) If a food is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then the determination of whether the labeling or advertisement is misleading shall take into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or fails to reveal facts material concerning consequences that may result from the use of that food under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. A label, labeling, or advertising in compliance with the federal act is not considered a violation of this act.

(2) A publisher, radio-broadcast licensee, agency, or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of false advertisement unless he or she has refused to provide, upon request of the director, the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency who caused the dissemination of the advertisement, or unless he or she has refused, upon the request of the director, to cease dissemination of the false advertisement.

History: 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

"Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

"(2) Until 6 months after the effective date of this act, compliance with the standards of the design, construction, and equipment of a food service establishment approved under former sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, MCL 333.12901, 333.12902, 333.12903, 333.12904, 333.12905a, 333.12906, 333.12907, 333.12908, 333.12910, 333.12911, 333.12912, 333.12913, 333.12916, and 333.12921, is considered compliance with this act.

"(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act."

289.5104 Donated food; criminal or civil liability; immunity; employment or designation of food safety manager.

Sec. 5104. (1) A retail food establishment, farmer, wholesaler, wholesale processor, distributor, or other person who donates food for use or distribution by a nonprofit organization or nonprofit corporation, and a nonprofit organization or nonprofit corporation that collects donated food and distributes that food to another nonprofit organization or nonprofit corporation free of charge or for a nominal fee, is not subject to any criminal liability under this act or any civil liability resulting from the nature, age, condition, or packaging of the food unless the donor or nonprofit organization or nonprofit corporation knew or reasonably should have known when it donated or distributed the food that the food was adulterated or not fit for human consumption.

(2) A nonprofit organization or nonprofit corporation that serves donated food described under subsection (1) shall employ or designate as a food safety manager an individual who is certified under a personnel certification program described in section 2129(1) and (5).

History: Add. 2015, Act 41, Imd. Eff. June 3, 2015.

289.5105 Administrative fines or costs.

Sec. 5105. (1) Upon finding that a person violated a provision of this act or a rule promulgated under this act, the department may impose an administrative fine of not more than \$500.00 for the first offense and not more than \$1,000.00 for a second or subsequent offense and the actual costs of the investigation of the violation. Each day of a continuing violation is not considered a separate violation of this act or a rule promulgated under this act. The department shall not impose upon any licensee or registrant administrative fines in the aggregate amount of more than \$4,000.00 per location for a firm with annual gross receipts of \$500,000.00 or less and \$8,000.00 per location for a firm with annual gross receipts of over \$500,000.00 during any 12-month period.

(2) Administrative fines and costs collected under this section shall be deposited into the dairy and food safety fund.

(3) This section does not require the department to issue an administrative fine for minor violations of this act if the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

(4) The department shall not impose administrative fines for violations of the food code other than priority items, priority foundation items, or repeated violations that remain uncorrected beyond the time frame for correction specified under or agreed to, specified, or approved by the director under section 8-405.11(A) or (B) or 8-406.11(A) or (B) of the food code. The department shall not impose an administrative fine for a core item violation of the food code unless the violation is not corrected within 30 calendar days after the evaluation.

History: 2000, Act 92, Eff. Nov. 8, 2000;—Am. 2007, Act 114, Eff. Apr. 1, 2008;—Am. 2012, Act 178, Eff. Oct. 1, 2012.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

“Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

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“(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act.”

289.5107 Violations; penalties; costs of investigation.

Sec. 5107. (1) Except as otherwise provided under this act, a person who violates any provision of this act or rules promulgated under this act is guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 or more than \$2,500.00 or by imprisonment for not more than 90 days, or both.

(2) Notwithstanding the other provisions of this act, a person who knowingly violates section 5101(1)(b) or (l) is guilty of a felony punishable by imprisonment for not more than 4 years or by a fine of not more than \$10,000.00 plus twice the amount of any economic benefit associated with the violation, or both.

(3) If a violation results in a conviction under this act, the court shall assess against the defendant the costs of the department's investigation. The assessment for costs of investigation shall be deposited into the dairy and food safety fund for the enforcement of this act.

History: 2000, Act 92, Eff. Nov. 8, 2000;—Am. 2007, Act 114, Eff. Apr. 1, 2008.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

“Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

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“(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act.”

289.5109 Report of violation as condition.

Sec. 5109. When a violation of section 5101(1)(k) occurs which is not suspected of threatening the safety of food intended for human consumption, the department shall provide a person owning or operating the food establishment a written report of the violation before subjecting persons to the penalties provided in this act.

History: 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

“Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

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“(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act.”

289.5111 Jurisdiction of court; restraining order.

Sec. 5111. In addition to the remedies provided for in this act, the department may apply to the circuit court for, and the court shall have jurisdiction upon hearing and for cause shown, a temporary or permanent injunction restraining any person from violating any provision of this act or rules promulgated under this act irrespective of whether or not there exists an adequate remedy at law.

History: 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

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289.5113 Application of remedies.

Sec. 5113. The regulatory authority shall justly apply the remedies according to law and this act consistent with the licensee's right to due process.

History: 2000, Act 92, Eff. Nov. 8, 2000.

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“(3) Beginning 6 months after the effective date of this act, a food service establishment shall comply with the standards of design, construction, and equipment established under this act.”

289.5115 Decision or order; direct review.

Sec. 5115. When a license holder or registrant has exhausted all administrative remedies available under this act and is aggrieved by a final decision or order in a contested case, the decision or order is subject to direct review by the courts as provided by law.

History: 2000, Act 92, Eff. Nov. 8, 2000.

Compiler's note: Sec. 1117 of Act 92 of 2000 provides:

“Sec. 1117. (1) Subject to subsections (2) and (3), this act takes effect 6 months after the date of enactment.

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