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Public Acts of 2000  
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**STATE OF MICHIGAN  
90TH LEGISLATURE  
REGULAR SESSION OF 2000**

**Introduced by Reps. Ruth Johnson, Law, Vear, Gilbert, Hager, Van Woerkom, Ehardt, Allen, Geiger, Pappageorge, Jellema, Cameron Brown, Middaugh, Richner, Mortimer, Julian, DeRossett, Garcia, Green, Rocca, Caul, Bovin, DeHart, Scott, Toy, Bisbee, Rivet, Schermesser, Hart, Jansen, Shulman, DeVuyst and Cassis**

# **ENROLLED HOUSE BILL No. 5196**

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.

*The People of the State of Michigan enact:*

## CHAPTER I SHORT TITLE, SCOPE, DEFINITIONS

Sec. 1101. This act shall be known and may be cited as the “food law of 2000”.

Sec. 1103. The provisions of this act regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any food for sale; and the sale, dispensing and giving of food, serving, and the supplying of food in the conduct of any food establishment.

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 512 of the federal act, 21 U.S.C. 512.

(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) "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 at no extra cost to its transient tenants. A bed and breakfast is not considered a food service establishment if exempt under section 1107 (l)(iii) or (iv).

(d) "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.

(e) “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.

(f) “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.

(g) “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) “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.

(d) “Federal act” means the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 301 to 321, 331 to 333, 334 to 343-3, 344 to 346a, 347, 348 to 356c, 358 to 360, 360b to 360dd, 360hh to 363, 371 to 376, and 378 to 397.

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

(f) “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, 72 Stat. 1784, pursuant to the federal act, the poultry products inspection act, Public Law 85-172, 71 Stat. 441, 21 U.S.C. 451 to 471, or the meat inspection act of March 4, 1907, chapter 2907, 34 Stat. 1258.

(g) “Food code” means food code, 1999 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.

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

(i) “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.

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

(k) “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, 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 food concession.

(iii) 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.

(iv) 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.

(v) 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.

(l) "Food warehouse" means a food establishment that stores or distributes prepackaged food for wholesaling.

Sec. 1109. As used in this act:

(a) "Imminent or substantial hazard" means a condition at a food establishment that the director determines requires immediate action to prevent endangering the health of people.

(b) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article and includes a requirement imposed under this act that any word, statement, or other information appearing on the display also appear on the outside container or wrapper of the retail package of the article or be easily legible through the outside container or wrapper.

(c) "Labeling" means all labels and other written, printed, or graphic matter upon an article, any of its containers or wrappers, or accompanying the article.

(d) "License limitation" means an action by which the director imposes restrictions or conditions, or both, on a license of a food establishment.

(e) "License holder" means the entity that is legally responsible for the operation of the food establishment including the owner, the owner's agent, or other person operating under apparent authority of the owner possessing a valid license to operate a food establishment.

(f) "Limited wholesale food processor" means a wholesale food processor that has \$25,000.00 or less in annual gross wholesale sales made or business done in wholesale sales in the preceding licensing year, or \$25,000.00 or less of the food is reasonably anticipated to be sold for the current licensing year. Only the food sales from the wholesale food processor operation are used in computing the annual gross sales under this subdivision.

(g) "Misbranded" means food to which any of the following apply:

(i) Its labeling is false or misleading in any particular.

(ii) It is offered for sale under the name of another food.

(iii) It is an imitation of another food unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food imitated.

(iv) Its container is so made, formed, or filled as to be misleading.

(v) It is in package form, unless it bears a label containing both the name and place of business of the manufacturer, packer, or distributor and an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count subject to reasonable variations as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(vi) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(vii) It purports to be or is represented as a food for which a definition and standard of identity have been prescribed by rules as provided by this act or under the federal act, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard, and, insofar as may be required by the rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(viii) It purports to be or is represented to be either of the following:

(A) A food for which a standard of quality has been prescribed by this act or rules and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

(x) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless the labeling states that fact and under other circumstances as established by rules regarding exemptions based upon practicality.

(xi) If a food intended for human consumption and offered for sale, its label and labeling do not bear the nutrition information required under section 403(q) of the federal act, 21 U.S.C. 343.

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product being adulterated or misbranded.

(xiii) It is a color additive whose packaging and labeling are not in conformity with packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(h) "Mobile food establishment" means a food establishment operating from a vehicle or watercraft that returns to a licensed commissary for servicing and maintenance at least once every 24 hours.

(i) "Mobile food establishment commissary" means an operation that is capable of servicing a mobile catering food establishment.

(j) "Person" means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.

(k) "Pesticide chemical" means any substance that, alone, in chemical combination, or in formulation with 1 or more other substances, is a pesticide within the meaning of the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i, 136j to 136r, and 136s to 136y, and is used in the production, storage, or transportation of raw agricultural commodities.

(l) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(m) "Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

Sec. 1111. As used in this act:

(a) "Raw agricultural commodity" means any food in its raw or natural state including fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.

(b) "Regulatory authority" means the department, the local health department, or the authorized representative having jurisdiction over the establishment.

(c) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment, but does not include a food processing plant.

(d) "Retail grocery" means an operation that sells or offers to sell food to the consumers for off-premises consumption. Off-premises consumption does not include take-out food intended for immediate consumption.

(e) "Rules" means administrative rules promulgated under this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(f) "Smoked fish rules" means regulation no. 285.569 of the Michigan administrative code, promulgated under former 1968 PA 39.

(g) "Special transitory food unit" means a temporary food establishment that is licensed to operate throughout the state without the 14-day limits or a mobile food establishment that is not required to return to a commissary.

(h) "Sulfiting agents" means any of the following:

(i) Sulfur dioxide.

(ii) Sodium sulfite.

(iii) Sodium bisulfite.

(iv) Potassium bisulfite.

(v) Sodium metabisulfite.

(vi) Potassium metabisulfite.

(i) "Temporary food establishment" means a food establishment which operates at a fixed location for a temporary period not to exceed 14 consecutive days.

(j) "Temporary license" means a written authorization issued by the director to operate for a specified limited time period.

(k) "Transient tenant" means a person who rents a room in a bed and breakfast for fewer than 30 consecutive days.

(l) "Vending machine" means a self-service device offered for public use that, upon activation by a coin, token, card, key, or paper currency, dispenses unit servings of food or beverages without the necessity of replenishing the device between each vending operation. Vending machine does not include any of the following:

(i) A device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk ball gum, nuts, and panned candies.

(ii) A water-dispensing machine that is registered under chapter IV.

(m) "Vending machine location" means the room, enclosure, space, or area in which 1 or more vending machines are installed and operated.

(n) "Wholesale" means selling to retailers or jobbers rather than directly to consumers.

(o) "Wholesale food processor" means an operation that processes, manufactures, packages, or labels food for wholesaling.

(p) "Wild game" means animals from their natural state and not cultivated, domesticated, or tamed.

Sec. 1113. A term defined in the food code has the same meaning when used in this act, except as specifically defined in this act.

Sec. 1115. (1) The following acts and parts of acts are repealed 6 months after the date of enactment of this act:

<u>Year</u>	<u>Public Act No.</u>	<u>Compiled Law Sections</u>
1913	384	289.551 to 289.559
1952	228	289.581 to 289.592
1957	166	289.261 to 289.268
1968	39	289.701 to 289.727
1978	328	289.801 to 289.810

(2) Sections 12901, 12902, 12903, 12904, 12905a, 12906, 12907, 12908, 12910, 12911, 12912, 12913, 12916, and 12921 of the public health code, 1978 PA 368, 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, are repealed 6 months after the date of enactment of this act.

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.

Sec. 1119. (1) Except as rescinded, rules promulgated under public acts repealed by this act retain authorization under this act.

(2) The following rules are rescinded 6 months after the date of enactment of this act:

(a) R 285.538 of the Michigan administrative code.

(b) R 285.549 of the Michigan administrative code.

(c) R 285.554 of the Michigan administrative code.

(d) R 285.556 of the Michigan administrative code.

(e) R 285.557 of the Michigan administrative code.

(f) R 285.558 of the Michigan administrative code.

(g) R 325.25101 through 325.26008 of the Michigan administrative code.

(3) Beginning 6 months after the date of enactment of this act, R 285.553 of the Michigan administrative code does not apply to any food establishments under this act except for any farm crop storages exempt from the requirements imposed under section 7101.

Sec. 1121. This act does not divest the director of any authority and powers available under part 24 of the public health code, MCL 333.2401 to 333.2498, for the enforcement of this act.

## CHAPTER II POWERS AND DUTIES OF THE DEPARTMENT

Sec. 2101. (1) The director shall provide for the administration and enforcement of this act. The director may delegate enforcement and administration of this act to certain local health departments in the manner provided for in chapter III.

(2) The director shall investigate complaints and initiate and conduct other investigations as he or she considers advisable to determine violations of this act.

(3) The director may promulgate rules for the enforcement and implementation of this act.

Sec. 2103. (1) A retail food advisory board is created within the department to advise the director on the implementation of this act and on the promulgation of rules under this act.

(2) The board shall contain at least 9 members appointed by the director and serving 2-year terms with at least 4 members representing the retail food industry, 2 members representing local health departments, 2 members representing the general public, and other members representing interests as considered appropriate by the director.

Sec. 2105. (1) When necessary for the enforcement of this act, the director may seize without formal warrant any food found to be sold, held for sale, or exposed for sale in violation of this act or rules promulgated under this act.

(2) If the director finds or has probable cause to believe that any food is adulterated or so misbranded as to be dangerous to public health or fraudulent, within the meaning of this act, he or she shall affix to the food a tag or other appropriate marking giving notice that the food is, or is suspected of being, adulterated or misbranded and has been seized or embargoed. A person shall not remove or dispose of the food tagged or marked as embargoed or seized, by sale or otherwise, until permission for removal or disposal is given by the director or a court of competent jurisdiction.

(3) If food seized or embargoed under subsection (1) or (2) is determined by the director to be adulterated or misbranded, he or she shall cause a petition to be filed in circuit court in whose jurisdiction the food is seized or embargoed for a complaint for condemnation of the food. Seized or embargoed food shall be destroyed at the expense of the claimant of the food, under the supervision of the director, and the court may order the payment of the costs and fees and storage and other proper expenses by the claimant of the food or his or her agents. However, if the court finds that adulteration or misbranding can be corrected by proper labeling or processing of the food, after entry of the order; payment of the costs, fees, and expenses; and execution of a good and sufficient bond conditioned that the food shall be so labeled or processed, the court may direct the food to be delivered to the claimant for labeling or processing under the supervision of the director. The claimant shall pay the expense of the supervision. The food shall be returned to the claimant of the food on the representation to the court by the director that the food is no longer in violation of this act and that the expenses of supervision have been paid. If the director determines that the food so seized or embargoed is not adulterated or misbranded, he or she shall remove the tag or other marking.

Sec. 2107. (1) If the director finds any adulterated food that the director declares to be a nuisance, the director shall immediately condemn, destroy, or in any other manner render the food unsaleable as human food.

(2) If adulterated or misbranded food is a nuisance, is dangerous to the public health, or is fraudulent and requires the director's supervision, or if the food establishment requests the supervision of the director for sorting, destruction, reconditioning, or other disposition, the food establishment that is in possession of the food at the time of the seizure or embargo is liable for the costs of such supervision.

Sec. 2109. If storage of seized food is not possible without risk to the public health, the director shall order immediate destruction of the food to be accomplished without delay by the owner, operator, or person in charge of the food establishment. The food shall be destroyed as specified in the order for destruction.

Sec. 2111. (1) The director shall have free access at all reasonable hours to any food establishment, including a vehicle used to transport or hold food, for the purpose of inspecting that food establishment or vehicle to determine if any of the provisions of this act are being violated. The director may secure samples or specimens of any food after paying or offering to pay for such samples in order to determine whether any provision of this act is being violated.

(2) The director may examine the records of the food establishment to obtain pertinent information about food, supplies, and equipment purchased, received, or used by, or pertaining to, persons employed by the food establishment or location.

Sec. 2113. (1) The director may order immediate cessation of operation of a food establishment upon a determination that continued operation would create an imminent or substantial hazard to the public health.

(2) A food establishment ordered to cease food operations under subsection (1) shall not resume operations until the director determines, upon reinspection, that the conditions responsible for the order to cease operations no longer exist. The director shall offer an opportunity for reinspection upon request of the license holder of the establishment.

(3) If the director orders an immediate cessation of operation of a food establishment under subsection (1), the license holder may request an administrative hearing.

Sec. 2115. If the director has reasonable cause to suspect disease transmission by an employee of a food establishment, he or she may secure a morbidity history of the suspected employee and make other investigations as he or she considers necessary.

Sec. 2117. The department shall submit to the governor and the legislature an annual report summarizing all judgments, decrees, and court orders, which have been rendered by the department under this act, including the nature of the charge and the disposition thereof. The department may disseminate information regarding food as it considers necessary to protect the health of the consumer and the protection of the consumer against fraud. This section does not prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

Sec. 2119. (1) Notwithstanding section 12909(1) of the public health code, MCL 333.12909, the department may promulgate rules to prescribe criteria for food service sanitation programs by local health departments. The department in promulgating these rules shall seek the advice and counsel of local health departments and the food service industry.

(2) The department shall periodically conduct comprehensive evaluations of each local health department's food service sanitation program. The evaluations shall be based on criteria developed by the department with input from local health departments and shall include a review of both of the following:

(a) The adequacy of sanitary conditions in the food service establishments within the local health department jurisdiction.

(b) The competency and training of the food service inspection personnel.

Sec. 2121. (1) The director may issue a food establishment license with limitations. License limitations may be imposed based upon either of the following determinations:

(a) The site, facility, sewage disposal system, equipment, water supply, or the food supplies, protection, storage, preparation, display, service, or transportation facilities are not adequate to accommodate the proposed or existing menu or otherwise adequate to protect the public health.

(b) Food establishment personnel are not practicing proper food storage, preparation, handling, display, service, or transportation techniques.

(2) The director shall promptly notify a license holder of the imposition of a license limitation. The license holder shall be provided an opportunity for an administrative hearing on the issue of the imposition of the limitation.

Sec. 2123. (1) A person whose license has been limited by the director may, at any time, request a reinspection of the food establishment for the purpose of removing the limitation and reinstating the full license.

(2) Based upon its reinspection, if the director determines that the conditions for removal of the license limitation have been met, he or she shall remove the limitation and reinstate the full license.

Sec. 2125. (1) The department shall charge the following fees for the following services:

(a) A reissuance of a duplicate license, \$15.00.

(b) A free-sale letter, \$25.00 per letter in an order and \$5.00 per duplicate letter in the same order.

(c) An inspection of a food establishment when the inspection is a second reinspection of a food establishment that has already been inspected and found to contain a critical violation or the inspection is performed at the request of the operator, \$60.00.

(d) A review and approval of training materials, \$60.00 per hour.

(e) A special transitory food unit plan review, \$177.00.

(2) Fees collected under this section shall be deposited in the general fund and credited to the department for enforcement of this act.

(3) The services referred to in subsection (1)(d) and (e) involve the formal review and approval procedure. The department may provide informal review or answer questions without charging a fee.

Sec. 2127. After a conference with the owner of a retail food establishment for a repeated failure to correct a critical violation, the director may require certain individuals to complete manager food safety training for that food establishment.

Sec. 2129. (1) Upon request, the department may review and issue approval of food safety training materials and food safety training programs including, but not limited to, home-study programs and computer-assisted training. Approval of food safety training materials and food safety training programs expires 3 years from the date of original issuance.

(2) To receive department approval, a food safety training material shall be reviewed for and contain the following:

(a) Accuracy and consistency with this act and the food code.

(b) Manager knowledge training that includes the knowledge requirements of section 2-102.11 of the food code.

(3) The issuance date for each original certificate issued under an approved food safety training program is the date the individual successfully completes the examination. A certificate expires 5 years from the date of original issuance. Any replacement or duplicate certificate shall have as its expiration date the same expiration date that was on the original certificate. Certified individuals may be recertified by passing a food safety certification examination or through an approved recertification training program.

(4) An individual certified under a training program approved under this section shall be recognized with full faith and credit by a local unit of government throughout the state.

(5) This section does not prohibit any local legislative body from implementing a food handler program, an employee health certification program, or a manager certification program, provided it is not in conflict with this section.

Sec. 2131. (1) When the department determines such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate rules fixing and establishing for any food or class of food a reasonable definition, standard of identity, and reasonable standard of quality and fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall designate the optional ingredients that are required to be named on the label.

### CHAPTER III DELEGATION

Sec. 3103. As used in this chapter:

(a) "Certified health department" means a county, district, or city health department that meets the criteria for certification of health departments established by this act and that is authorized by the director to enforce this act for retail groceries, food processing plants, or food concessions.

(b) "Foodborne illness outbreak" means an incident where any of the following occur:

(i) Two or more persons, not of the same household, have ingested a common food and have a similar disease, similar symptoms, or excrete the same pathogens and there is a time, place, or person association between these persons.

(ii) There is a single case of suspected botulism, mushroom poisoning, paralytic shellfish poisoning, or other rare disease.

(iii) There is a case of a disease or poisoning that can be definitely related to ingestion of a food.

(c) "Food service sanitation program" means the systematic activity of the department and a local health department for effective administration and enforcement of the food code and this act, including all of the following:

(i) Periodic inspections of food service establishments, temporary food service establishments, vending machines, and vending machine locations for compliance with law.

(ii) Support of recommendations for licensure with appropriate records.

(iii) Review of plans and specifications for new and extensively remodeled establishments.

(iv) Educational activities.

(v) Investigation of reports of foodborne illnesses.

(vi) Other activities which may be necessary to assure proper implementation of this act.

Sec. 3105. (1) The department shall delegate the authority and responsibility for the enforcement of the requirements pertaining to food service establishments contained in this act and the rules promulgated under this act to local health departments meeting the program criteria provided for in this act and rules promulgated under this act. The local health departments shall enforce this act and the rules promulgated under this act and may delegate enforcement authority under an organization approved pursuant to section 2431 of the public health code, MCL 333.2431. If a food service sanitation program is discontinued or is revoked for failure to meet the program criteria, redelegation to a local health department by the director of the program under this section is not required. Local health departments delegated authority under this chapter shall enforce this act and rules promulgated under this act in the manner provided for in part 24 of the public health code, MCL 333.2401 to 333.2498, except that late fees under section 4113, administrative fines under section 5105, and felony penalties under section 5107 are specifically not delegated to the local health departments.

(2) When a food service establishment is a part of a retail grocery or food processing plant and the retail grocery and food processing plant are the predominant part of the food business as determined by the department, authority and responsibility pertaining to that establishment are not delegated under this section.

(3) When a retail grocery or food processing plant is a part of a food service establishment but the food service establishment is the predominant part of the food business as determined by the department, the authority and responsibility for the entire establishment are delegated under subsection (1).

(4) Mobile and temporary food establishments that are predominantly food service establishments as determined by the department are delegated to the local health departments under this section. Mobile and temporary food establishments that are predominantly retail groceries are not delegated under subsection (1).

Sec. 3107. The director may delegate the authority and responsibility for the enforcement of the requirements pertaining to food processing plants, retail grocers, and food concessions contained in this act and any rules adopted under this act to any certified health department. The certified health departments shall enforce this act and any rules promulgated under this act.

Sec. 3109. Local health departments that are delegated authority by the director pursuant to this chapter are authorized agents of the director for the purpose of implementing and administering this act and rules promulgated under this act.

Sec. 3111. The power and authority granted under part 24 of the public health code, MCL 333.2401 to 333.2498, shall be retained by local health departments delegated authority under this act.

Sec. 3113. A county, city, village, or township shall not regulate those aspects of food service establishments or vending machines which are subject to regulation under this act except to the extent necessary to carry out the responsibility of a local health department to implement licensing provisions of chapter IV. This chapter does not relieve the applicant for a license or a licensee from responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances not in conflict with this act.

Sec. 3115. (1) A local health department shall promptly review a license application for a food service establishment or vending machine location to determine if the application is complete and accurate. A local health department may return an incomplete or inaccurate application to a license applicant and request any additional information it considers necessary to assure completeness or accuracy of the application.

(2) After a local health department determines that an application is proper, complete, and accurate, it shall inspect the proposed or existing food service establishment or vending machine location to determine compliance with this act. The inspection shall be conducted by the local health department before it makes a recommendation to the department on the issuance of a license.

(3) A local health department shall forward its recommendation for approval of the license or approval with limitation of the license to the department.

Sec. 3117. A local health department may apply procedures for enforcement of this act that provide notice and opportunity for a hearing equivalent in effectiveness to and which protect the rights of the applicant or licensee comparable to the provisions of chapters 4 and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292. A local health department shall have a written enforcement procedure and shall make a copy of that procedure available to the public upon request.

Sec. 3119. (1) Except as otherwise provided for in subsection (2), upon submission of an application, an applicant for a food service establishment license shall pay to the local health department having jurisdiction the required sanitation service fees authorized by section 2444 of the public health code, MCL 333.2444, and an additional state license fee as follows:

- (a) Vending machine location fee..... \$ 2.50.
- (b) Temporary food service establishment..... \$ 2.50.
- (c) Food service establishment..... \$ 19.00.
- (d) Mobile food service establishment..... \$ 2.50.
- (e) Mobile food establishment commissary ..... \$ 19.00.
- (f) Special transitory food unit ..... \$ 30.00.

(2) When licensing a special transitory food unit, a local health department shall impose a fee of \$117.00.

(3) The state license fee required under subsection (1) shall be collected by the local health department at the time the license application is submitted. The state license fee is due and payable by the local health department to the state within 60 days after the fee is collected.

(4) A school or other educational institution is exempt from paying the fees in section 2444 of the public health code, MCL 333.2444, and this section but is not exempt from the other provisions of this chapter. A charitable, religious, fraternal, service, civic, or other nonprofit organization that has tax-exempt status under section 501(c)(3) of the internal revenue code of 1986 is exempt from paying fees under this section except for the vending machine location license fee. An organization seeking an exemption under this subsection shall furnish to the department or a local health department evidence of its tax-exempt status.

(5) The department shall adjust on an annual basis the fees prescribed by subsection (1) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index but not to exceed 5%. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor or its successor. The adjustment shall be rounded to the nearest dollar to set each year's fee under this subsection, but the absolute value shall be carried over and used to calculate the next annual adjustment.

(6) The local health department shall forward the license applications to the department with appropriate recommendations.

Sec. 3121. (1) The department or a local health department shall conduct inspections in compliance with this act.

(2) Records for all of the following shall be maintained by a local health department:

(a) Applications for licensure.

(b) Operation licenses.

(c) Inspection reports.

(d) Pertinent correspondence.

(e) Plans and specifications.

(f) Administrative actions.

(g) Other applicable information relating to the operation of each food service establishment.

(3) A local health department shall maintain a record of all consumer complaints, the ensuing investigation, and the result of the complaint.

(4) All department and local health department records shall be retained in accordance with the records retention schedule of the department.

Sec. 3123. (1) An unannounced compliance inspection of each food service establishment shall be performed at least once every 6 months by a regulatory authority.

(2) A food service establishment which operates for 9 or fewer months each year shall be inspected at least once during the period of operation by a regulatory authority.

Sec. 3125. (1) Subject to subsection (3), a local health department, with the approval of the director and based on criteria developed by the department in consultation with local health departments, may reduce the frequency of inspections of individual food service establishments if the local health department determines that a reduced inspection frequency will not adversely affect food service sanitation practices within the food service establishment.

(2) A food service establishment which, upon investigation, is implicated in a foodborne illness outbreak or chemical intoxication shall be inspected by a regulatory authority in compliance with section 3123 for not less than the next 12 months.

(3) A local health department shall not reduce the minimum frequency of inspections of any food service establishment to less than once each 12 months.

Sec. 3127. (1) The findings of an inspection of a food service establishment shall be recorded on an inspection report form approved by the department. The form shall identify those items considered to be critical from a public health standpoint.

(2) The inspection report shall summarize findings relative to compliance with the requirements of this act. The report form shall be signed and dated by the local health department representative.

(3) Upon completion of the inspection, a copy of the completed inspection report form shall be furnished to the person in charge of the food service establishment. The person in charge shall sign the report form acknowledging receipt.

Sec. 3129. (1) A local health department shall investigate an allegation of foodborne diseases and poisonings or suspected foodborne diseases and poisonings connected with food service establishments within its jurisdiction and delegated authority and shall promptly make a report of its findings to the department.

(2) If an investigation indicates that a source of a foodborne disease or poisoning was from a food processing, food storage, or similar type of food establishment over which the department has legal jurisdiction or responsibility, the local health department shall immediately notify the director while the local health department is completing the investigation.

Sec. 3131. (1) A local health department shall develop and implement a communications system with other applicable governmental agencies, individuals, and organizations including, but not limited to, hospital emergency rooms and state and local police. The communications system shall provide the means to contact specific local health department employees and basic information necessary to initiate a foodborne illness outbreak investigation. The information provided in the communications system shall be updated annually.

(2) Procedures for investigating suspected foodborne illness outbreaks shall be implemented consistent with procedures contained in the publication entitled "Procedures to Investigate Foodborne Illness, 5th Ed.," prepared and published by the international association of food protection and incorporated by reference or an equivalent plan submitted to and approved by the department.

(3) All information gathered during the investigation which is not exempted from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, and shall be made available to the owner, operator, or his or her employees to minimize the possibility of reoccurrence of the foodborne illness and to assure compliance with the code and this act.

Sec. 3133. Laboratories capable of providing the necessary analyses of food samples shall be utilized by a local health department to assist in the conduct of a food service sanitation program.

Sec. 3135. (1) The department shall make available to any local health department an application form to be completed as a request for certification. The application shall provide information needed to substantiate the request to become a certified health department.

(2) A local health department seeking certification shall have sufficient trained administrative, inspection, and support personnel and sufficient equipment to enforce applicable laws and rules consistent with current state standards in all licensed establishments within its jurisdictional boundaries.

(3) A certified health department shall demonstrate to the department the ability to conduct inspections and related activities in accordance with the department's food inspection information management system within prescribed time limitations utilized by the department. Inspection, investigation, and legal actions and related activities shall be reported to the department on forms furnished by the department.

(4) A certified health department must be capable of conducting necessary sampling and produce surveillance equal to state standards.

Sec. 3137. (1) The department shall conduct a general review and evaluation of reports and related data made by certified health departments under this act as often as considered necessary by the department.

(2) An inspection quality assurance program consisting of field evaluation of performed inspections conducted by the certified health department shall be routinely conducted by the department at a ratio of approximately 1 per 100 inspections made.

(3) A certified health department shall report annually to the department a summary of all inspections, investigations, samplings, legal actions, and any other actions of a significant nature on a form furnished by the department. This report shall be made annually on the basis of the state fiscal year.

(4) Review or evaluation disclosing adverse findings shall be reported in writing by the department to the health officer of the certified health department within 30 days after the review or evaluation under subsection (1) is completed.

Sec. 3139. (1) If a certified health department fails to meet the requirements established in this act or rules promulgated under this act, written notice of deficiencies shall be furnished to the health officer of that certified health department within 30 days after completion of the review or evaluation under section 3137. This notice shall offer an opportunity to the health officer of the certified health department for a hearing with the director. If a hearing is not requested, certification issued under this chapter shall be revoked within 30 days following the notice to the health officer of the certified health department. If a hearing is held and deficiencies are not corrected within the time period specified in the hearing, certification shall be revoked within the time period specified in the hearing.

(2) If requested by the health officer of the certified health department in a written notice to the director, certification issued under this chapter shall be revoked within 30 days of receipt of the written notice.

(3) Revocation of certification issued under this chapter does not restrict a health department from reapplication for certification.

#### CHAPTER IV LICENSING

Sec. 4101. (1) Except as provided in section 4105, a person shall not operate a food establishment unless licensed by the department as a food establishment.

(2) Separate areas for food service or preparation located in 1 building and operated under 1 management are considered to be 1 food establishment and only 1 license is required.

(3) Except as otherwise provided in this act, a city, county, or other local unit of government shall not adopt or enforce licensing ordinances or regulations for persons regulated under this act.

Sec. 4103. (1) An applicant shall submit an application for a food establishment license at least 30 calendar days before the date planned for its opening, the change of ownership, or the expiration of the current license.

(2) Application for the license under subsection (1) shall be submitted upon the forms furnished by the department and shall contain the reasonable information required by the department to process the application.

(3) An application for a mobile food establishment license shall include all of the following information:

(a) The location and dates of the operation.

(b) The name and address of the commissary that will service the applicant.

(4) Within 10 days after a change in the servicing commissary, the mobile food establishment licensee shall submit an affidavit containing the name and address of the new commissary servicing the licensee.

(5) The director may issue a temporary food establishment license.

Sec. 4105. (1) Except as otherwise provided for in subsection (2), a person, establishment, or organization that is 1 or more of the following is exempt from the licensure requirements under this act:

(a) Subject to subsection (2), an establishment licensed under 1 of the following acts while conducting activities within the scope of that act:

<u>Public Act No.</u>	<u>Year</u>	<u>Compiled Law Sections</u>
184	1913	445.331 to 445.341
222	1913	288.101 to 288.117
141	1939	285.61 to 285.82a
228	1959	286.371 to 286.379
158	1964	290.451 to 290.466
233	1965	288.21 to 288.29a
298	1968	288.321 to 288.334

(b) A produce stand that offers only whole uncut fresh fruits and vegetables.

(c) Consumers or nonprofit cooperatives of consumers providing products only for their own use.

(d) Nonprofit cooperatives who are growers or producers selling unprocessed products of their own production.

(e) Retail outlets for the sale of prepackaged honey or maple syrup produced in Michigan if the outlet is operated by the producer and the processing facility is licensed under this act.

(f) A temporary food establishment with no food preparation using only single-service articles and serving only non-potentially-hazardous food or beverage.

(g) A retail food establishment that does both of the following:

(i) Only sells prepackaged, non-potentially-hazardous foods.

(ii) Offers only an incidental amount of food, such as the sale of single-service packages.

(h) A commercial fishing guide service that serves lunch to a party of not more than 12 clients on or adjacent to a body of water, river, or stream while pursuing, capturing, catching, killing, taking, or attempting to take fish. As used in this subparagraph, "commercial fishing guide service" means a service provided for a fee or other valuable consideration, regardless of whether the fee or other valuable consideration is paid directly or indirectly, to assist another person in pursuing, capturing, catching, killing, taking, or attempting to take fish.

(i) A person owning or operating a device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk gum, nuts, and panned candies.

(2) Notwithstanding subsection (1)(a), a person operating as or conducting activities the director considers to be a food establishment must be licensed in the appropriate category under this act.

(3) If food is prepared in a food service establishment licensed under this chapter and the food is transported from the food service establishment to a fixed temporary serving location, the serving location is not required to be separately licensed and is considered an extension of the food service establishment if no food preparation is conducted at the serving location and the food is transported and served by employees of the food service establishment.

Sec. 4107. To qualify for a food establishment license, an applicant shall do all of the following:

- (a) Submit an application on a form provided by the department.
- (b) Be an owner of the food establishment or an officer of the legal entity owning the food establishment.
- (c) Comply with the requirements of this act and rules promulgated under this act.
- (d) Allow the director access to the proposed food establishment in order to determine compliance with the applicable requirements of this act and rules.
- (e) Pay the applicable license fees at the time the application is submitted.

Sec. 4109. A license, other than a license for a temporary food service establishment, expires at midnight on April 30 each year. The department may issue a temporary food license for a period not to exceed 14 days.

Sec. 4111. The department shall impose the following license fees for each year or portion of a year:

- (a) Retail food establishment: \$67.00.
- (b) Extended retail food establishment: \$172.00.
- (c) Wholesale food processor: \$172.00.
- (d) Limited wholesale food processor: \$67.00.
- (e) Mobile food establishment: \$172.00.
- (f) Vending: \$25.00.
- (g) Temporary food establishment: \$25.00.
- (h) Special transitory food unit: \$117.00.
- (i) Mobile food establishment commissary: \$172.00.
- (j) Food warehouse: \$67.00.

Sec. 4113. (1) The department shall impose, for a renewal application postmarked or delivered in person beginning May 1 of each year, a late fee of an additional \$10.00 for each business day the application is late. The late fee for a new application submitted after the establishment has opened for business is an additional \$10.00 for each business day the application is late. The total late fee shall not exceed \$100.00.

(2) The department shall not issue or renew a license until the fee and any late fee have been paid. A hearing is not required regarding the department's refusal to issue or renew a license under this section.

(3) The department may waive the late fee for producers of maple syrup, honey, and other seasonal agricultural products if the license application is submitted not less than 30 days before the applicant engages in processing, packing, freezing, storing, selling, or offering for sale the food or drink described in this subsection.

(4) The late fee shall be retained by any certified health department or, in an area where there is no certified health department, by the department.

(5) The department shall use the late fee for the administration and enforcement of this act.

Sec. 4115. (1) A water bottler or water dispensing machine owner shall register with the department each brand of bottled water with a unique declaration of identity before the sale or offering for sale of the water. The application for registration shall be made on a form prescribed by the department and shall include both of the following:

- (a) The proposed label or placard for the water.
- (b) For each year or portion of a year, a registration fee of \$25.00 for each brand of water with a unique declaration of identity and \$25.00 for each water dispensing machine.

(2) The registration required by subsection (1) expires annually on April 30 and shall be renewed 30 calendar days before expiration of the current registration.

(3) The department shall assess a late fee of \$25.00 for bottled water or water from a water dispensing machine that is sold or offered for sale without registration. A registration is not effective until the late fee is paid.

Sec. 4117. (1) Except as provided in subsection (2), money collected under this chapter by the department shall be credited to the general fund of the state.

(2) A consumer food safety education fund is created as a revolving fund in the department of treasury. The consumer food safety education fund shall be administered by the department and funded by adding \$3.00 to the fee for each food establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide statewide training and education to consumers on food safety. An advisory committee consisting of at least 9 people representing consumers, industry, government, and academia shall advise the department on the use of the funds. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(3) An industry food-safety education fund is created as a revolving fund in the department of treasury. The industry food-safety education fund shall be administered by the department and funded by adding \$2.00 to the fee for each food service establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide food safety training and education to food service establishment employees and agents of the director who enforce this act. The advisory committee created in subsection (2) shall advise the department on the use of the funds. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

Sec. 4119. (1) Except as otherwise provided in subsection (2), a person licensed as a food establishment under this chapter shall keep a copy of the current license or temporary license furnished by the department posted and exposed in a conspicuous place for public inspection. A conspicuous place is the principal place where food business is transacted.

(2) In the case of vending machines, the name and address and telephone number of the current vending machine location operator shall be conspicuously displayed on each vending machine.

Sec. 4121. Thirty days before a food establishment proposes either of the following changes, a licensee shall notify the regulatory authority having jurisdiction of that proposed change:

(a) A change in the type of license even if the change would not result in the change of the regulatory authority having jurisdiction over the activity.

(b) A change in the type of license that would result in the change of the regulatory authority having jurisdiction over the activity.

Sec. 4123. A food establishment license is not transferable as to the holder or the location.

Sec. 4125. (1) Before a food establishment license is issued, the director shall determine if the applicant meets the minimum requirements of this act and rules promulgated under this act.

(2) After an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a food establishment license or a registration for bottled water issued under this act for failure to comply with requirements of this act or a rule promulgated under this act. A person whose registration for bottled water is revoked or suspended shall discontinue the sale and offering for sale of the bottled water until he or she complies with this act and the director issues a new registration or removes the suspension.

(3) Based upon facts submitted by a person familiar with those facts or upon information and belief alleging that an imminent threat to the public health, safety, or welfare exists, the director may summarily suspend a license or registration issued under this act. A person whose license or registration has been summarily suspended under this section may petition the director to dissolve the order. Upon receipt of such a petition, the director shall immediately schedule a hearing to decide whether to grant or deny the petition to dissolve. The presiding officer shall grant the requested relief dissolving the summary suspension order unless sufficient evidence is presented that an imminent threat to the public health, safety, or welfare exists requiring emergency action and continuation of the director's summary suspension order.

Sec. 4127. (1) After the regulatory authority receives a petition for a hearing from a license holder whose license is summarily suspended under section 4125, the proceedings shall be promptly commenced and determined as required by section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(2) This section does not prevent the regulatory authority's immediate reinstatement of a license when the regulatory authority determines the public health hazard or nuisance no longer exists.

Sec. 4129. (1) A license or registration applicant or holder may request a hearing regarding the regulatory authority's denial of a license or registration. A person desiring a hearing in response to a denial of a license or registration shall submit a hearing request to the regulatory authority within 30 calendar days after the date of the denial.

(2) The regulatory authority shall afford a hearing within 30 days after receiving a written request for a hearing as specified in this section when the request demonstrates that there is a genuine and material issue of fact that justifies that a hearing be held.

(3) Hearings shall be conducted in an expeditious and impartial manner.

## CHAPTER V PROHIBITED ACTS AND PENALTIES

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.

(f) Refuse to permit entry or inspection, or to permit the taking of a sample, as authorized by section 2111.

(g) Give a false guaranty or undertaking, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person from whom he or she received the food in good faith.

(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 promulgated under this act.

(k) Permit filthy or insanitary 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 promulgated under this act.

(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 promulgated under this act.

(2) Each day a violation of this section occurs is a separate violation of this section.

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.

Sec. 5105. (1) Upon finding that a person violated a provision of this act or 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 any continuing violation is not considered a separate violation of this act or rule promulgated under this act. Under no circumstances

shall the department 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) Any administrative fines and costs collected under this section shall be paid to the state treasury and credited to the general fund.

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

(4) The conditions warranting administrative fines to achieve compliance with the provisions of the food code are limited to critical or repeated violations that remain uncorrected beyond the time frame for correction approved, directed, or ordered by the director under food code section 8-405.11(A) and (B) and section 8-406.11(A) and (B). The department shall not impose an administrative fine for a noncritical violation of the food code unless at least 30 calendar days have been allowed for correction after the inspection.

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 paid to the state treasury and credited to the department for the enforcement of this act.

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.

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.

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.

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.

## CHAPTER VI STANDARDS FOR FOOD ESTABLISHMENTS

Sec. 6101. (1) Notwithstanding section 12909(3) and (4) of the public health code, MCL 333.12909, and rules promulgated under section 12909(3), chapters 1 to 8 of the food code are incorporated by reference except as amended and modified as follows:

(a) Section 3-401.11(B) is modified so that the oven temperature for high humidity oven temperature reads "66°C (130°F) or higher".

(b) Where provisions of this act and rules promulgated under this act specify different requirements.

(2) The director, by promulgation of a rule, may adopt any changes or updates to the food code.

(3) The annexes of the food code are considered persuasive authority for interpretation of the food code.

Sec. 6103. (1) The following food establishments are exempt from the requirement for plan review and approval specified in section 8-201.11 of the food code:

(a) A temporary food establishment.

(b) A retail grocery.

(2) The plan review exemption for a retail grocery in subsection (1) does not apply to the operation of a food service establishment within a retail grocery. For purposes of this section, a deli within a retail grocery is not considered a food service establishment unless it provides seating for the customers.

Sec. 6105. (1) A person seeking approval of plans and specifications for a food establishment shall submit a transmittal letter with the plans and specifications. The letter shall identify and summarize the plans or projects and shall indicate the owner, operator, or designated agent.

(2) An applicant shall submit any required fees, as authorized by section 2444 of the public health code, MCL 333.2444, or this act.

(3) The director may reject the plans for a proposed food establishment if any of the information required by the food code is not included, is incomplete, or is inaccurate.

Sec. 6107. (1) Upon receipt of plans and specifications, the director shall review the plans and specifications as soon as practicable to determine their completeness and adequacy. If a submission of complete plans and specifications is not reviewed within 30 business days of receipt, the plans and specifications will be considered complete and adequate. Thereafter, construction may proceed without the director's authorization. Approval of the plans and specifications by operation of law does not relieve the license applicant or license holder from compliance with other provisions of this act.

(2) If the director determines that plans and specifications are incomplete or inadequate, or both, he or she shall notify the license applicant or license holder in writing and shall request the submission of revised plans and specifications with appropriate corrections or additions. The director shall not approve the plans and specifications until he or she determines that the plans and specifications are complete and adequate and that the food establishment is designed in accordance with the food code and this act.

(3) Upon a determination by the director that the plans and specifications are complete and adequate, the director shall mark the plans and specifications showing approval and the date of approval, shall notify the license applicant or license holder in writing of the approval, and shall authorize construction, conversion, alteration, or remodeling of the food establishment.

(4) Approval of plans and specifications by the director and authorization for construction pursuant to the food code, this act, and rules promulgated under this act expire if construction, conversion, alteration, or remodeling has not commenced within 1 year from the date of approval or has been interrupted for 1 year or more since the date of approval. A license applicant or license holder may apply in writing to the director for an extension of the approval and construction authorization before the approval expires. The request for extension shall identify the project for which the approval and construction authorization were originally granted and the reason for requesting the extension. The director may require modification of the plans and specifications to incorporate updated food sanitation practices or requirements, where applicable, unless the license applicant or license holder has entered into binding agreements or contractual obligations which cannot be canceled or modified without substantial loss to the license applicant or license holder as determined by the director.

(5) The approved plans and specifications shall be located on-site during construction and shall be available for inspection by the director.

Sec. 6109. The director may attach any condition to an approval of plans and specifications granted under section 6107 that he or she considers necessary to assure proper construction, conversion, alteration, or remodeling of a food establishment or portion of the food establishment.

Sec. 6111. (1) A license applicant or license holder shall submit in writing to the director a change in approved plans and specifications. Written approval must be obtained before construction under the approved plans and specifications.

(2) Upon request of the director, a license applicant or license holder shall submit as-built plans, clearly showing the work as constructed.

Sec. 6113. (1) The director may rescind his or her authorization for construction, conversion, alteration, or remodeling of a food establishment if he or she determines that the license applicant or license holder is not undertaking construction in accordance with approved plans and specifications. The director shall notify the license applicant or license holder before rescission of construction authorization, advise him or her of required corrective action, and afford him or her the opportunity to take any required corrective action.

(2) The director shall order the license applicant or license holder in writing to cease construction, alteration, conversion, or remodeling activities if the applicant or license holder does any of the following:

(a) Fails to submit required plans and specifications for the construction, alteration, extensive remodeling, or conversion to use as a food establishment.

(b) Fails to construct, alter, extensively remodel, or convert a food establishment in accordance with plans and specifications approved by the director.

(c) Fails to take corrective action as required pursuant to this section.

Sec. 6115. (1) After completion of the construction, alteration, conversion, or remodeling and before the opening of a food service establishment, the license applicant or license holder shall notify the director of the completion, shall submit an application for a license to operate the food service establishment, and shall arrange for a preopening inspection.

(2) During the preopening inspection, the director shall determine whether the food establishment was constructed, altered, converted, or remodeled in accordance with the approved plans and specifications.

(3) Local health departments may specify when requests for preopening inspections are to be submitted.

Sec. 6117. Exhaust ventilation shall be designed, constructed, and installed in compliance with applicable state law.

Sec. 6119. (1) A ventilation balance report shall be provided to the director for all new or remodeled ventilation systems in food service establishments. The ventilation balance report shall agree with the air quantities stipulated on the approved plans and specifications for the installation.

(2) The total building exhaust and make-up air, if provided, shall be balanced to within plus or minus 0.02-inch water gauge, according to the approved plans.

Sec. 6121. All cooking equipment and exhaust systems shall be at operating temperature during the ventilation test. Containers of water shall be placed over ignited open flame burners to minimize the jet influence of open burners.

Sec. 6123. A smoke test shall be performed to determine reasonable performance of the ventilation system.

Sec. 6125. The waste line from ice storage bins and ice machines shall not be directly connected with another waste line and shall be drained through an air gap.

Sec. 6127. (1) The owner or operator of a food establishment primarily engaged in the retail sale of cold or room temperature food for home consumption under this act shall not permit the smoking or burning of tobacco on the premises.

(2) A sign indicating that smoking is prohibited in the retail food establishment shall be posted at each public entrance to the facility.

(3) An establishment regulated under subsection (1) may have a designated smoking area for employees and the public. A designated employee and public smoking area shall be isolated from the retail food area.

(4) An owner or operator who conspicuously posts signs pursuant to subsection (2) is not liable for a violation of subsection (1).

(5) A person, except employees or members of the general public who smoke in a designated smoking area established pursuant to subsection (3), shall not smoke or burn tobacco in a retail food establishment regulated under subsection (1). A person who violates this section is guilty of a misdemeanor punishable by a fine not to exceed \$100.00.

Sec. 6129. (1) The completed inspection report shall specify a period of time for correction of noted violations. The license holder shall correct the violations within the time specified in the report.

(2) All violations which are marked as critical on the inspection report form shall be corrected immediately unless otherwise specified. The director shall conduct a follow-up inspection to confirm corrections.

Sec. 6131. (1) Each commissary where mobile units with retention tanks are serviced shall provide for the sanitary disposal of liquid waste.

(2) The local health department shall approve locations for the sanitary disposal of liquid waste.

Sec. 6133. The director may license as a temporary food service establishment a mobile food establishment which does not return to a commissary or service base after 24 hours but continues to operate at a fixed location.

Sec. 6135. (1) The name and address of the business operating a mobile food establishment shall be affixed to each side of the exterior of the vehicle in letters not less than 3 inches high and 3/8 of an inch wide and shall be in contrast to the vehicle background color. When more than 1 mobile food service establishment is operated by the same person, the director shall assign a number to each establishment.

(2) A copy of limitations attached to the license of a mobile food service establishment shall be carried on the mobile food service establishment at all times.

(3) If a mobile food establishment is operating on a regularly scheduled route, the local health department having jurisdiction may require the license holder to provide a copy of the route schedule at the time the license is approved and every time the route schedule is changed.

(4) A representative of the local health department or the operator in the presence of the representative of the local health department shall affix 2 decals provided by the department on the mobile food establishment at the time the license is issued. The decals shall be conspicuously displayed on each side of the mobile food establishment so as to be visible when in transit and while serving the public.

Sec. 6137. (1) To qualify for a special transitory food unit license, an applicant shall allow a review and receive approval of plans and specifications as specified in chapter VI. This review and approval must include the menu and standard operating procedures for the unit.

(2) A special transitory food unit license holder shall do all of the following:

(a) Keep a copy of the approved standard operating procedures in the unit and available for review upon inspection by the director.

(b) Operate in compliance with standard operation procedures approved by the director.

(c) Before serving food within the jurisdiction of a local health department, notify the local health department in writing of each location in the jurisdiction at which food will be served and the dates and hours of service. The license holder shall mail the notice by first-class mail or deliver the notice not less than 4 business days before any food is served or prepared for serving within the jurisdiction of the local health department.

(d) While in operation, request and receive 2 inspections per licensing year. A local health department and the department shall charge a fee of \$90.00 for such an inspection.

(e) Send a copy of all inspections reports to the regulatory authority that approved the license within 30 days after receipt.

(3) If a license holder fails to comply with any of the requirements of this section or the food code, the food establishment is ineligible for licensure as a special transitory temporary food establishment for the following licensing year and must apply for temporary or other type of food establishment licenses.

Sec. 6139. A food service establishment shall not store on the premises or apply to any food prepared in the food service establishment sulfiting agents.

Sec. 6141. (1) A food service establishment in which solid foods are sold and consumed on the premises shall prominently display a poster in the kitchen area of the food service establishment diagramming and explaining the antichoking techniques safe for both adults and children approved by the department for dislodging foreign obstacles caught in the throat of a choking person.

(2) This section does not impose a duty upon the owners or employees of a food service establishment to apply antichoking techniques.

Sec. 6143. (1) A charitable, religious, fraternal, or other nonprofit organization that prepares or serves wild game in connection with its meetings or as part of a fund-raising event or that prepares or serves wild game to indigent persons free of charge is not required to obtain the wild game from a department-approved source.

(2) If a charitable, religious, fraternal, or other nonprofit organization prepares or serves wild game that is not from a department-approved source in connection with its meetings or a part of a fund-raising event or prepares or serves wild game that is not from a department-approved source to indigent persons free of charge, the organization shall post at the entrance to the dining area a sign bearing the following message: "The wild game served at this facility has not been subject to state or federal inspection." The words of the message shall be written or printed in letters not less than 3/4 of an inch high and 3/4 of an inch wide and readable.

Sec. 6145. Notwithstanding section 12909(2) of the public health code, MCL 333.12909, the manufacturing, processing, or freezing of frozen desserts as defined in section 2 of the frozen desserts act of 1968, 1968 PA 298, MCL 288.322, in food service establishments licensed pursuant to this act, which frozen desserts are intended only for use in the soft form by patrons, guests, patients, or employees, shall comply with the standards of this act and rules promulgated pursuant to this act.

Sec. 6147. If a food service establishment is affected by fire, flooding, accidents, explosions, or other disaster that may create an imminent or substantial hazard, all food service operations shall cease. The licensee shall immediately report the disaster to the local health department and request an evaluation of the food service establishment to determine the effect of the disaster on the operation of the establishment.

Sec. 6149. (1) To satisfy section 3-603.11 of the food code, the following must be met:

(a) A disclosure or reminder, or both, shall be made by effective written means.

(b) Disclosure that an item contains raw or undercooked food of animal origin by either or both of the following:

(i) Items are described to include the disclosure, such as “oysters on the half shell (raw oysters)”, “raw-egg caesar salad”, and “hamburgers (can be cooked to order)”.

(ii) Items are asterisked with a footnote that states the items are served raw or undercooked, contain, or may contain raw or undercooked ingredients.

(c) A reminder of the increased risk associated with eating such foods in raw or undercooked form. The reminder is satisfied when items requiring disclosure are asterisked to a footnote that states 1 of the following:

(i) “Regarding the safety of these items, written information is available on request.”.

(ii) “When eating out or cooking at home, thorough cooking of foods of animal origin reduces the risk of foodborne illness. Contact your physician or public health professional for further information.”.

(iii) “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness.”.

(iv) “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.”.

(2) As used in this section, “effective written means” means the information is displayed in a manner that is noticeable to be read by an interested person actively seeking this information. It does not include effectiveness in changing behavior, effectiveness in educating the target audience, or the effectiveness in being read. For purposes of this section, the opinion of the person in charge on the effectiveness should be presumed to be accurate unless there is a factual reason to believe otherwise.

Sec. 6151. (1) Prior to a license holder implementing alternative practices and procedures to section 3-301.11(B) of the food code, the license holder shall do all of the following:

(a) Evaluate alternatives to bare-hand contact and determine them to be impractical.

(b) Meet the critical requirements of the food code that are necessary for the implementation of alternatives to section 3-301.11(B) of the food code as allowed under this section.

(c) Implement a documented food safety training program for all employees having bare-hand contact with ready-to-eat foods.

(2) The training program shall include, but not be limited to, the following areas:

(a) Proper hand washing practices and procedures including the potential problems that exist with unsanitary hand washing practices.

(b) Hygienic food practices and safe food preparation.

(c) The importance of not working when ill with any symptoms of foodborne illness.

(3) Training described under this section shall be given to new employees and periodic refresher training shall be given to any employee having bare-hand contact with ready-to-eat foods. The license holder shall document the training program.

(4) The license holder shall also implement a documented plan to periodically monitor employees to ensure that the practices and procedures established under this section are being followed and list the corrective actions that will be taken if employees are not following the practices and procedures established under this section.

(5) A license holder implementing alternative procedures and practices under this section shall periodically review its operations, verify the effectiveness of the alternative practices and procedures, and monitor when ready-to-eat foods are handled by its employees.

(6) Upon the request of the director, the license holder shall identify any ready-to-eat foods that will be contacted with bare hands, as well as the specific location and method for preparation.

(7) Documentation required under subsections (1)(c), (3), and (4) shall be readily available at the retail food establishment for use by the person in charge and review by the director.

(8) The documentation required under subsections (1)(c), (3), and (4) is not required to be approved by the director prior to implementation of alternatives to section 3-301.11(B) of the food code.

(9) The department shall provide guidance to retail food establishments on the documentation of alternatives to section 3-301.11(B) of the food code as required under this section.

(10) The department may require the modifications or suspension of existing alternative practices and procedures implemented under this section if the department determines that there is a threat to public health.

## CHAPTER VII FOOD AND PROCESSING STANDARDS

Sec. 7101. Subject to section 1119(3), a food processing plant shall comply with the regulations of the food and drug administration in 21 C.F.R. part 110, except that refrigerated potentially hazardous food shall be stored at 4.4 degrees centigrade (40 degrees Fahrenheit) or below.

Sec. 7103. (1) All thermally processed, low-acid foods that are packaged in hermetically sealed containers shall be processed in a licensed commercial food establishment.

(2) All processors of acidified, low-acid foods packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 C.F.R. part 114.

(3) All thermally processed, low-acid foods that are packaged in hermetically sealed containers shall comply with the regulations of the U.S. food and drug administration in 21 C.F.R. part 113.

(4) Hermetically sealed packages shall be handled to maintain product and container integrity.

Sec. 7105. The requirement that a processor of smoked fish obtain a variance under the smoked fish rules is waived if the processor demonstrates compliance with 21 C.F.R. part 123, the "seafood HACCP plan".

Sec. 7107. (1) Bottled water shall be obtained from a water supply approved by the department of environmental quality and in compliance with the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(2) A copy of the current sanitary survey report from the department of environmental quality under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, and the water sample results required under that act shall be available at the bottling plant for the director to demonstrate approval of the source and supply of the water.

(3) Bottled water shall not contain any substance in excess of the maximum contaminant level adopted for drinking water under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(4) A water dispensing machine shall be clearly and conspicuously labeled with the declaration of identity of the product dispensed.

Sec. 7109. A person shall not operate a bottled water plant or bottle water for the purpose of sale or distribution in this state without first demonstrating to the department that the source, bottling facility, treatment and bottling practices comply with 21 C.F.R. part 129, and product water meets the requirements of this chapter.

Sec. 7111. Packaged food shall comply with standard of identity requirements in 21 C.F.R. parts 131 to 169 and the definitions and standards of identity or composition contained in 9 C.F.R. part 319, and the general requirements in 21 C.F.R. part 130 and subpart A of part 319 of title 9 of the Code of Federal Regulations except as modified or rejected by this act or rules promulgated under this act.

Sec. 7113. As used in this chapter:

(a) "Added fat" means the addition of fat tissue originating from portions consisting of less than 12% muscle tissue in each portion.

(b) "Added water or ice" means greater moisture content than normally found in meat.

(c) "Artificial coloring" means coloring containing any dye or pigment which was manufactured by a process of synthesis or other similar artifice or by extraction of a natural dye or pigment from a plant or other material from which the dye or pigment was formed.

(d) "Artificial flavoring" means any flavoring containing any sapid or aromatic constituent manufactured by synthesis or similar process.

(e) "Binders" means food and nonfood substances used as an ingredient in comminuted meats for binding, stabilizing, thickening, or maintaining viscosity of the product.

(f) "By-products or variety meats" means hearts, livers, brains, tongues, tripe, stomach, lungs, melts, eyes, weasand meats, head meat, cheek meat, salivary glands, udder, lips, ears, snouts, skin, feet, spleens, slaughterhouse by-products, spinal cords, cracklings or crackling meal, packinghouse by-products, processing plant by-products, partially defatted fatty tissues, and partially defatted chopped meat.

(g) "Comminuted" means chopped, diced, flaked, ground, or otherwise reduced to minute particles.

(h) "Extenders" means food substances used as an ingredient in comminuted meats primarily for replacement of meat ingredients.

(i) "Fat" means the quantity of adipose tissue determined by chemical analysis.

(j) "Fresh meat" means meat that has undergone no cooking, heating, or other processing except boning, cutting, comminuting, or freezing.

(k) "Lamb" means meat derived from sheep less than 1 year of age.

(l) "Meat" means the edible part of clean, sound striated muscle of cattle, swine, sheep, deer, goat, turkey, or chicken slaughtered in compliance with all applicable laws, with or without the accompanying and overlying fat, and sinew, nerve, gland, and blood vessels which normally accompany the muscle tissues and which are not separated from it in the process of dressing.

(m) "Skeletal meat" means the meat that is attached to a part of the skeleton including head and cheek meat.

(n) "Veal" means meat derived from a calf not more than 1 year of age.

Sec. 7115. Sausage consists only of skeletal meat either fresh, cured, salted, pickled, or smoked. Sausage may contain the following:

(a) Salt or spice, sodium or potassium nitrate, sodium or potassium nitrite, or ascorbic acid that comply with applicable regulations of the United States department of agriculture food safety inspection service or any other curing agents determined appropriate by the department pursuant to rules promulgated under this act. As used in this subdivision, "curing agent" means any substance added to meat to cause or enhance preservation of the meat product.

(b) Added edible animal fat from the animals specified, eggs or egg products, chives, tomatoes, parsley, peppers, onions, garlic, celery, seasoning, or other natural flavoring, honey, syrup, sugar, pure refined dextrose, or subsequent cooking or smoking.

(c) Not more than 3-1/2% by weight nonfat dry milk, dry whole milk, or calcium-reduced milk if it is declared in conjunction with the product name.

(d) Fruits, vegetables, or nuts, or a combination thereof, if the name of the product is so qualified.

(e) The total percentage of moisture in the finished product shall not exceed 4 times the percentage of protein, which shall not be less than 12%. The protein content requirement shall not apply to pork sausage, breakfast sausage, or roasted sausage but the finished product shall contain not more than 50% of fat. To facilitate chopping or mixing, water or ice may be used in uncooked sausage in an amount not to exceed 3% of the total ingredients.

(f) Fresh and fresh frozen sausage, smoked and unsmoked dry sausage, may contain butylated hydroxyanisole, butylated hydroxytoluene or propyl gallate, or a combination of these antioxidants, with or without citric acid, in amounts not to exceed specifications established under 9 C.F.R. 318.7 and 9 C.F.R. part 319. When such antioxidants are added, the label on the product shall declare the presence of antioxidants in the manner required by the United States department of agriculture meat inspection service.

(g) Sausage shall not contain any extenders, artificial flavors, artificial color, binders, excess added water or ice, boric acid or borates, sulphites, sulfur dioxide, sulphurous acid, or any other harmful preservative, by-products, or variety meats. Extenders necessary to produce low-fat products may be permitted as described in rules promulgated under this act. No other parts of the animal or any other substance excepting as above specified shall be permitted in sausage.

(h) Harmless lactic acid bacterial starters may be used in an amount not to exceed 1/2 of 1%. When used, the harmless bacterial starter shall be included in the list of ingredients in the order of its predominance.

(i) The following products are considered to be sausage, whether processed or inserted in either natural or artificial casings or other containers: wieners, bologna, ring bologna, knackwurst, bratwurst, roasted sausage, breakfast sausage, pork sausage, chicken sausage, turkey sausage, leona, beer salami, cooked salami, Polish sausage, minced luncheon, kielbasa, bockwurst, all varieties of dry or semi-dry sausage, and other meat food products prepared in sausage form and excluding loaves, liver products, headcheese, sulze, blood sausage, potato sausage, kishka, tongue sausage, and New York or New England pressed luncheon.

(j) "Fresh pork sausage", "Polish sausage", "fresh kielbasa", and "fresh country-style sausage" are sausages prepared from fresh pork meat.

(k) "Italian-style sausage" shall be uncured, unsmoked, and contain at least 85% meat or meat and fat with no more than 35% fat. It may contain red and green pepper, onion, and garlic. Italian sausage shall be prepared from fresh pork meat.

(l) "Fresh beef sausage" is prepared with fresh beef meat and shall not contain more than 30% fat.

(m) "Poultry-meat sausage" shall be made from fresh chicken and turkey meat containing the natural proportions of light and dark meat unless otherwise designated. The name shall be identified by the species contained if the product contains all its meat from 1 species. It shall not contain more than 30% fat.

(n) "Venison sausage" shall be made from the meat of deer from approved sources. A person shall not offer for sale, sell, or expose for sale any other product described as venison sausage. Fat of another species and approved source may be added to venison sausage.

(o) Sausage containing wild game and made on commercial order shall be labeled "not for sale". Wild game from more than 1 owner shall not be mixed into sausage unless a licensed processor butchered all the wild game. Processors

shall reject any carcass that shows evidence of spoilage or contamination. Wild game and wild-game product and processing times shall be kept separate from other meat and meat processing, including, but not limited to, storage in separate or structurally-partitioned coolers. Food contact surfaces shall be thoroughly washed and sanitized after the processing of wild game and before the resumption of any other processing.

Sec. 7117. Hamburger or ground beef consists of fresh beef meat that has been comminuted and shall be identified as either hamburger or ground beef. Hamburger shall not contain more than 30% of fat. Ground beef shall meet the same requirements as hamburger except that it shall not contain more than 20% of fat. Monosodium glutamate may be added if declared. Hamburger may contain added beef fat, but ground beef shall not contain added fat. Ground beef and hamburger shall not contain added water or ice. Only ground beef may be qualified by the name of a particular cut of meat, such as “ground beef round” or “ground beef chuck”. If so qualified, it shall consist entirely of meat from the particular meat cut and be certified as that specific cut by a method of certification as the director may establish by rule. Hamburger or ground beef shall not contain by-products or variety meats, binders, extenders, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulfur dioxide, or sulphurous acid. No other parts of the animal or any other substance except as otherwise provided in this subsection is permitted in hamburger or ground beef.

Sec. 7119. Other comminuted meat food products, including nonspecific loaves and liver products, headcheese, blood sausage, kishka, tongue sausage, chili con carne with beans, or any other meat food products that may be allowed, shall be produced in compliance with applicable regulations of the United States department of agriculture meat inspection service.

Sec. 7121. Chili or chili con carne shall consist of not less than 40% of meat computed on the weight of the fresh meat and shall not contain by-products and variety meats except that head meat, cheek meat, and heart meat, exclusive of the heart cap, may be used to the extent of 25% of the meat ingredients with specific declaration on the label. The mixture may contain not more than 8%, individually or collectively, of cereal, vegetable starch, vegetable flour, soy flour, soy protein concentrate, isolated soy protein, dried milk, calcium reduced dry skim milk, nonfat dry milk solids, or seasoning. Chili con carne shall not contain binders, artificial color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulfur dioxide, or sulphurous acid. No other parts of the animal are permitted in chili con carne.

Sec. 7123. Meat loaf consists of comminuted meat, processed in the form of a loaf, containing not less than 65% meat. Meat loaf mix consists of meat loaf sold in bulk uncooked form. Meat loaf may contain salt, seasoning, sodium or potassium nitrate, ascorbic acid, or the salts thereof, sodium or potassium nitrite, cereal vegetables, vegetable protein, nonfat dry milk solids, soy flour, eggs or egg products, macaroni, cheese, condiments, nuts, fruits, or gelatin. Binders and extenders shall not exceed 12% of the product. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3% of the total ingredients. Meat loaf shall not contain by-products of variety meats, artificial flavors or color, vegetable coloring, chemical preservative, boric acid or borates, sulfur dioxide, sulphites, or sulphurous acid. No other substance is permitted in meat loaf or meat loaf mix, except as otherwise provided in this section.

Sec. 7125. Ground lamb, chicken, turkey, and veal shall not contain any added water or ice, artificial flavoring, by-products or variety meats, binders, extenders, artificial color, vegetable coloring, or chemical preservatives. No other parts of the animal or any other substance shall be permitted except as follows:

(a) Ground lamb shall consist of comminuted fresh lamb meat, with or without added lamb fat, and shall not contain more than 25% fat.

(b) Ground chicken shall consist of comminuted fresh chicken meat, with or without added chicken fat, and shall not contain more than 15% fat.

(c) Ground turkey shall consist of comminuted fresh turkey meat, with or without added turkey fat, and shall not contain more than 15% fat.

(d) Ground veal shall consist of comminuted fresh veal meat, with or without added veal fat, and shall not contain more than 20% fat.

(e) Ground pork shall consist of comminuted fresh pork with or without the addition of pork fat as such and shall not contain more than 30% fat. Ground pork shall not contain extenders, binders, variety meats, by-products, added water or ice, artificial flavor or color, vegetable coloring, chemical preservative, boric acid or borates, sulphites, sulfur dioxide, or sulphurous acid. No other parts of the animal or any other substance is permitted in ground pork.

Sec. 7127. “Meat pattie” is a product prepared in pattie form. “Meat pattie mix” is a product sold in bulk uncooked form. Meat patties and meat pattie mix are a mixture of fresh comminuted meat with or without the addition of fat and seasonings and containing not less than 65% meat. Binders and extenders may be used up to 12% of the finished product. Meat pattie and meat pattie mix shall not contain artificial color or flavor, by-products or variety meats, added

water or ice, or more than 30% fat. Meat patties and meat pattie mix with fruits, vegetables, nuts, or mushrooms, either as a coating or ingredient, are permitted if labeled and advertised as “meat patties with \_\_\_\_\_”, inserting the common or usual name of the addition.

Sec. 7129. (1) If a food is subject to a standard established under this chapter, it shall be identified by the name required by that standard. If no standard applies, the product shall be identified by its common or usual name. If no common or usual name exists, the product shall be identified by an appropriately descriptive name that is not misleading and that accurately identifies or describes, in as simple and direct terms as possible, the basic nature of the food and its characterizing ingredients or properties. A product manufactured or sold under the provisions of this act, which is sold in closed or sealed packages shall bear a complete label. The label shall bear the true name of the product as defined in this act, an ingredient statement if the product contains more than 1 ingredient, the net weight of the product, and the name and address of the manufacturer.

(2) Products sold from bulk retail displays shall bear a sign or placard containing the true and approved name of the product. If the product contains more than 1 ingredient, an ingredient statement shall be placarded, posted, or otherwise available for the customer in written form.

(3) Meat products using antioxidants shall indicate on the label, or in the absence of a label an adjacent placard, their presence and purpose.

(4) Meat products containing monosodium glutamate, hydrolyzed vegetable protein, or any other source of monosodium glutamate shall indicate on the label or, in the absence of a label, an adjacent placard in its presence.

(5) The meat ingredients in a meat product that specifies 1 type of meat in its name, such as ham loaf, pork loaf, veal patties, or turkey sausage, shall be entirely from the species indicated in the product name. The meat in a meat product that specifies more than 1 type of meat in its name, such as beef and turkey sausage, shall be entirely from the types indicated, and shall contain at least 20% of each meat. A meat product that contains a type of meat consisting of less than 20% of that meat may be labeled as “(product) \_\_\_\_\_ added” or “product with \_\_\_\_\_”, inserting the common name of that meat. Sausage labeled or advertised as all meat or all beef shall not contain any nonfat dry milk solids or dry whole milk.

(6) All required words and numbers shall be legible to potential customers.

Sec. 7131. A person shall not sell or offer for sale a product that is not manufactured to the ingredient standards of this act unless the federal government legally preempts Michigan’s ingredient standards. In that case, federally inspected meats not meeting the ingredient requirements of this act shall be identified as federally inspected on intact, sealed packaging from the federally inspected location.

Sec. 7133. (1) All products manufactured under terms of this chapter may be sold in colored artificial casings or container only if they are in complete compliance with all applicable regulations of the United States department of agriculture. These products shall not be sold in colored natural casings.

(2) In addition to the requirements of section 1105(a), any product within the purview of this section shall be considered adulterated if it is the product of an animal which has died otherwise than by slaughter.

Sec. 7135. (1) Temporary permits granted for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under the conditions provided in such permits.

(2) The department may issue additional temporary permits where they are necessary to the completion or conclusiveness of an otherwise adequate investigation and where the interests of consumers are safeguarded.

(3) Such temporary permits are subject to the terms and conditions the department may prescribe by rule.

Sec. 7137. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 C.F.R. parts 170 to 180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 C.F.R. parts 181 to 186, substances that exceed amounts specified in 9 C.F.R. 318.7, or pesticide residues that exceed provisions specified in 40 C.F.R. part 185.

## CHAPTER VIII LABELING AND ADVERTISING

Sec. 8101. Packaged food shall be labeled as specified in 21 C.F.R. part 101, 9 C.F.R. part 317, and subpart N of part 381 of title 9 of the Code of Federal Regulations, and as specified under sections 3-202.17 and 3-202.18 of the food code.

Sec. 8103. (1) All bulk displays of unpackaged food and drink offered for sale at a retail food establishment, including salad bars, which contain a detectable amount of sulfiting agents shall be prominently placarded with a sign which is clearly visible to the customer and which declares either of the following statements:

(a) (NAME OF PRODUCT)

THIS PRODUCT CONTAINS A SULFITING AGENT. SULFITES MAY CAUSE AN ALLERGIC REACTION IN CERTAIN PERSONS, PARTICULARLY ASTHMATICS.

(b) (NAME OF PRODUCT) \_\_\_\_\_, the blank to be filled in with the name of the sulfiting agent, and if added as a preservative, a separate description of its function.

(2) All letters on the sign shall be of the same type style and color, not less than 1/4 inch in height, and of a color in clear contrast to the background. A smaller type size may be permitted if the department determines space is not available for the placard and the largest type size possible is used. If a retail establishment has multiple bins of sulfite-treated food which are segregated, 1 placard listing all of the applicable products is acceptable if it is placed at approximately eye level over the bins.

Sec. 8105. (1) A person shall not do any of the following:

(a) Make, publish, disseminate, circulate, or place before the public any advertisement containing any assertion, representation, or statement which is untrue, deceptive, or misleading or falsely represents the kind, classification, grade, or quality of meat.

(b) Use any term of quality without using or having for sale the quality of meat advertised or offered for sale.

(c) Use the term "USDA" unless the official grade is also designated.

(d) Designate or use any brand name of a company unless the meat so advertised or displayed for sale is of a quality which the use or designation of the brand name of such company would reasonably indicate.

(2) A person shall not advertise or display for sale any of the following:

(a) Any meat of the ovine species that is 2 years old or over as "yearling" or "lamb". Such meat shall be clearly designated "mutton".

(b) Any meat described by the use of the words "prime", "choice", or "good" unless such meat advertised for sale actually bears the "USDA" federal stamp designating such grade or is of equal quality as the federal grade would designate.

(c) Any ham unless the advertisement or display states whether the ham is skinned or regular.

(d) Any ham portion described by the use of the words "one-half" or "half ham" that has had a center slice removed.

(e) Any pork shoulder described as "ham".

(f) Any meat or meat product which has been branded or marked as imitation by a manufacturer or processor unless the advertisement or display clearly states that such meat or meat product is an imitation.

(3) A person shall not substitute in any sale any inferior or cheaper cut of meat without informing the purchaser that such substitution is being made.

(4) A person shall not keep or display any canned meats or canned meat products at a temperature exceeding 6° centigrade (41° Fahrenheit) if the label of such meats or meat products specifies that they shall be kept under refrigeration.

(5) Whenever it becomes necessary for the purposes of this act to procure a sample or samples of meat or meat products, the person in charge of the place where inspection is made must permit the sample or samples to be obtained upon being tendered the advertised or offered price of the item being procured.

Sec. 8107. (1) As used in this section:

(a) "Date" means the recommended last day of sale.

(b) "Perishable food" means any food in package form which the manufacturer, packer, or retailer, in conjunction with the department, determines as having a significant risk of spoilage, loss of value, or loss of palatability within 90 days of the date of packaging.

(c) "Prepackaged" means packaged prior to being displayed or offered for sale.

(2) A retail food establishment shall not sell or offer for sale a prepackaged perishable food unless there is clearly and conspicuously stamped upon or attached to the package a date identified by month and day except that bakery products with a shelf life of 7 days or less may be dated with a day of the week or an abbreviation.

(3) The date may be displayed with or without explanatory terms. If explanatory terms are used, such terms shall be limited to 1 of the following: "Sell by \_\_\_\_\_", "Sell before \_\_\_\_\_", "Last date of sale \_\_\_\_\_", "Recommended last date of sale \_\_\_\_\_", or "Recommended sale date \_\_\_\_\_". Other meaningful terms may be used if specifically approved by the department.

(4) This section does not prohibit the sale of food after the date if the product is wholesome and sound and is clearly identified as having passed the date.

(5) The retail or final seller is responsible for the proper advertisement of perishable food sold after the date.

(6) A person who prepackages perishable food shall do all of the following:

(a) Establish a meaningful date that takes into consideration the food quality and characteristics of the food, its packaging, and customary conditions encountered in commercial channels.

(b) Allow a reasonable period after the date for consumption of the food without physical spoilage.

(c) Keep a record of the method of determination of the date.

(7) A retailer who purchases prepackaged perishable food may, upon written agreement with the person prepackaging such food, determine, identify, and be responsible for the date placed on, or attached to, each package of such food.

(8) The date shall not be altered. A person shall not rewrap or repackage a perishable food, in its original form and texture, with a date on the package different from the original.

(9) The date shall be calculated to allow a reasonable period for the subsequent consumption of the food, but shall not allow for a period which would result in a health nuisance as described in section 2107.

(10) This section does not apply to fresh fruits and vegetables, canned food, and frozen food, nor to milk and milk products dated in accordance with section 1 of the fluid milk act of 1965, 1965 PA 233, MCL 288.21.

(11) The requirements of this section do not apply to any of the following:

(a) An individually packaged food item that is a component of a larger food item if the larger food item is identified with a date the same as or earlier than the date of that component.

(b) Perishable foods packaged under, and in compliance with, federal laws and regulations, if providing information equal to or greater than the information required by this section.

(c) Smoked fish under the smoked fish rules.

Sec. 8109. All products that are sold or otherwise distributed from a manufacturing, processing, packing, or repacking activity shall be marked with a meaningful, visible, and legible code to enable positive lot identification and to facilitate, where necessary, the segregation of specific lots that may have become contaminated or are otherwise unfit for their intended use. Invisible coding is not considered meaningful coding. The coding format shall be provided to the department upon request. Coding records shall be retained for a period of time that exceeds the shelf life of the product or for 2 years, whichever is shorter.

Sec. 8111. (1) A person shall not manufacture for sale, offer or expose for sale, sell or deliver, or have in his or her possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this chapter.

(2) The word "vinegar" as used in this section is limited to a water solution of acetic acid derived by the alcoholic and subsequent acetous fermentation of fruits, grain, vegetables, sugar, or syrups and if not distilled must carry in solution the extractive matter derived solely from the substances indicated on the label as its source.

(3) Vinegar shall not be sold or offered for sale as apple or cider vinegar which is not the legitimate product of pure apple juice. The term "cider vinegar" or "apple cider vinegar" as used in this section means vinegar derived by the alcoholic and subsequent acetous fermentation of the expressed juice of apples, the acidity, solids, and ash of which have been derived exclusively from apples and which contains not less than 4% of absolute acetic acid. Cider vinegar which, during the course of manufacture, has developed in excess of 4% acetic acid may be reduced to a strength of not less than 4%, and cider vinegar so reduced is not regarded as adulterated.

(4) Every manufacturer or producer of cider vinegar shall plainly label on the head of the cask, barrel, keg, or other container of such vinegar, his or her name, place of business, and the words "cider vinegar" or "apple cider vinegar". A person shall not mark or label as cider vinegar or apple cider vinegar any package containing that which is not cider vinegar. Any vinegar sold or offered for sale shall be marked or labeled plainly upon the package or container from which it is sold and also on the original package or container in which it is sold or delivered, in a manner that shows its true character and source.

(5) Vinegar sold or offered for sale as sugar vinegar shall be strictly and distinctly fermented from sucrose, molasses, refiner's syrup, or nutritive carbohydrate sweetener.

(6) Vinegar sold or offered for sale as malt vinegar shall be strictly and distinctly fermented from malted barley, cereals, or a concentrate of malted barley or cereals, which has been enzymatically converted by the malting process.

(7) Vinegar shall not be sold or offered for sale in which foreign substances, other than substances permitted under this act, drugs, or acids have been introduced. Vinegar shall not contain any artificial color except as permitted under this act. Vinegar shall contain not less than 4 grams of acetic acid per 100 cubic centimeters at 20° centigrade. If vinegar contains any artificial substance, except as permitted under this act, or contains less than the required amount of acidity, it shall be considered to be adulterated.

(8) Vinegar made by fermentation and oxidation of the juice of grapes or the acetous fermentation of wine, without the intervention of distillation, shall be labeled with the name of the fruit or substance from which the vinegar has been made.

(9) Vinegar made by acetous fermentation of dilute distilled ethyl alcohol shall be labeled "distilled vinegar", "white distilled vinegar", "distilled white vinegar", or "white vinegar". Vinegar, except flavored vinegar and blended vinegar, made in part from distilled vinegar shall be conspicuously labeled "distilled vinegar" and shall have the component vinegars declared in the ingredient statement.

(10) Flavored vinegar shall be labeled "\_\_\_\_\_ flavored vinegar". The space shall be filled in with the name of the characteristic flavor. All of the words in the name shall appear on a background of contrasting color. The flavor name shall be in letters at least 1/2 the size of the letters in the word "vinegar". The word "flavored" shall be in letters at least 1/2 the size of the letters in the flavor name.

(11) Blended vinegar shall be labeled "blended vinegar" or "\_\_\_\_\_ vinegar", the blank to be filled in with a name which accurately describes the nature or function of the vinegar. All of the words in the name shall be in letters on a background of contrasting color.

(12) As used in this section:

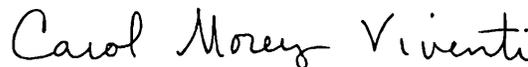
(a) "Blended vinegar" means the acetous fermentation of a blend of raw materials or a blend of 2 or more of the vinegars defined in this chapter but not including apple cider vinegar.

(b) "Flavored vinegar" means vinegar to which garlic, shallots, chili, tarragon, herbs, or spices, or the extract of any of those substances, is added to impart a characteristic flavor.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.