

**SUBSTITUTE FOR
HOUSE BILL NO. 6133**

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 3105, 3129, 3139, 4101, 4105, 5101, and 6103
(MCL 289.3105, 289.3129, 289.3139, 289.4101, 289.4105, 289.5101,
and 289.6103), sections 3105 and 5101 as amended by 2012 PA 178,
section 3139 as amended by 2007 PA 113, section 4101 as amended by
2010 PA 112, and section 4105 as amended by 2016 PA 188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3105. (1) The department shall delegate the authority and
2 responsibility for the enforcement of the requirements pertaining
3 to food service establishments contained in this act and rules to
4 local health departments meeting the program criteria provided for
5 in this act and rules. The local health departments shall enforce

1 this act and rules and may delegate enforcement authority under a
 2 plan of organization approved pursuant to section 2431 of the
 3 public health code, MCL 333.2431. If a food service program is
 4 discontinued or is revoked for failure to meet the program
 5 criteria, redelegation to a local health department by the director
 6 of the program is not required. Local health departments delegated
 7 authority under this chapter shall enforce this act and rules in
 8 the manner provided for in part 24 of the public health code, MCL
 9 333.2401 to 333.2498, except that late fees under section 4113,
 10 administrative fines under section 5105, and criminal fines under
 11 section 5107 are specifically not delegated to the local health
 12 departments.

13 (2) If a food service establishment is a part of a retail
 14 grocery or food processor and the retail grocery ~~and or~~ food
 15 processor ~~are is~~ the predominant part of the ~~food~~ business as
 16 determined by the department, authority and responsibility
 17 pertaining to ~~that~~ **the food service** establishment are not delegated
 18 under subsection (1).

19 (3) ~~If~~ **Except as provided under subsection (5), if** a retail
 20 grocery or food processor is a part of a food service establishment
 21 but the food service establishment is the predominant part of the
 22 ~~food~~ business as determined by the department, the authority and
 23 responsibility for the entire establishment are delegated under
 24 subsection (1).

25 (4) Mobile and temporary food establishments and ~~special~~
 26 transitory food units that are predominantly food service
 27 establishments as determined by the department are delegated to the
 28 local health departments under subsection (1). Mobile and temporary
 29 food establishments and ~~special~~ transitory food units that are

1 predominantly retail groceries or food processors are not delegated
2 under subsection (1).

3 (5) If a food processor is part of a food service
4 establishment as described under subsection (3) and processes for
5 wholesale low acid canned food, acidified food, juice, seafood,
6 fermented foods other than alcohol, or aseptic-processed foods, or
7 performs a process determined by the department to be complex,
8 authority and responsibility may be transferred from the local
9 health department back to the department for activities related to
10 processing food for wholesale. The local health department must
11 forward to the department, on a form provided by the department,
12 information regarding the operation of a food processor that is
13 part of a food service establishment as described under subsection
14 (3) within 30 days after the operation is identified.

15 (6) A food processor that is part of a food service
16 establishment as described under subsection (3) or (5) may receive
17 a separate license from the department, and is responsible only for
18 the fee required under section 3119 and not a licensing fee
19 described under section 4111.

20 Sec. 3129. (1) A local health department ~~or the department, as~~
21 **applicable**, shall investigate an allegation of foodborne diseases
22 and poisonings ~~or suspected foodborne diseases and poisonings~~
23 connected with food ~~service~~-establishments within its jurisdiction
24 ~~and delegated authority and shall promptly~~ make a report of its
25 findings to the department.

26 (2) If an investigation indicates that ~~a source of a~~ **an**
27 **alleged** foodborne disease or poisoning was from a food processing,
28 food storage, or similar type of food establishment over which the
29 department has legal jurisdiction or responsibility, the local

1 health department shall immediately notify the ~~director~~**department**
 2 while the local health department is completing the investigation.
 3 **If the department is notified under this subsection, the department**
 4 **shall provide a report of its response and findings to the local**
 5 **health department.**

6 Sec. 3139. (1) If a certified health department fails to meet
 7 the requirements established in this act or rules, ~~promulgated~~
 8 ~~under this act,~~**the department may revoke the certified health**
 9 **department's certification and delegated authority after providing**
 10 **not less than 120 days'** written notice. ~~of deficiencies shall be~~
 11 ~~furnished to the health officer of that certified health department~~
 12 ~~within 30 days after completion of the review under section 3137.~~
 13 ~~This notice shall offer an opportunity to the health officer of the~~
 14 ~~certified health department for a hearing with the director. If a~~
 15 ~~hearing is not requested, certification issued under this chapter~~
 16 ~~shall be revoked within 30 days following the notice to the health~~
 17 ~~officer of the certified health department. If a hearing is held~~
 18 ~~and deficiencies are not corrected within the time period specified~~
 19 ~~in the hearing, certification shall be revoked within the time~~
 20 ~~period specified in the hearing.~~

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

25 **(2) (3) Revocation of a certified health department's**
 26 **certification and delegated authority** issued under this ~~chapter~~**act**
 27 does not restrict a **certified** health department from reapplication
 28 for certification.

29 Sec. 4101. (1) Except as provided in sections 4102 and 4105, a

1 person shall not operate a food establishment unless licensed by
2 the department as a food establishment.

3 (2) Separate areas ~~for-of~~ food service or preparation
4 **establishments** located ~~in-on~~ 1 building **premises** and actively
5 operated under 1 management ~~are~~ **may be** considered ~~to-be~~ 1 food
6 establishment and only 1 license ~~is~~ **may be** required, ~~. The director~~
7 ~~may require separate licenses for these areas if managed separately~~
8 ~~even though under the same owner.~~ **as determined by the department.**

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

13 Sec. 4105. (1) A person, establishment, or organization that
14 is 1 or more of the following is exempt from the licensure
15 requirements under this act:

16 (a) Subject to subsection (2), an establishment licensed under
17 1 of the following acts while conducting activities within the
18 scope of that act:

19 ~~(i) Grain dealers act, 1939 PA 141, MCL 285.61 to 285.89.~~

20 ~~(i) (ii)~~ 1959 PA 228, MCL 286.371 to 286.379.

21 ~~(ii) (iii)~~ 1964 PA 158, MCL 290.451 to 290.466.

22 ~~(iii) (iv)~~ Grade A milk law of 2001, 2001 PA 266, MCL 288.471 to
23 288.540.

24 ~~(iv) (v)~~ Manufacturing milk law of 2001, 2001 PA 267, MCL
25 288.561 to 288.740.

26 (b) A person that ~~is-offering~~ **offers** only whole uncut fresh
27 fruits and vegetables directly to consumers.

28 (c) Consumers or nonprofit cooperatives of consumers in
29 compliance with the nonprofit corporation act, 1982 PA 162, MCL

1 450.2101 to 450.3192, providing products from regulated sources
2 only for their own use.

3 (d) Nonprofit cooperatives in compliance with the nonprofit
4 corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, that are
5 growers selling unprocessed products of their own production or are
6 producers selling unprocessed products of their own production from
7 regulated sources.

8 (e) Retail outlets for the sale of prepackaged honey or maple
9 syrup produced in this state if the **retail** outlet is operated by
10 the producer and the processing facility is licensed under this
11 act. Both retail outlets and processing facilities are exempt from
12 licensure under this act for producers with gross sales of
13 ~~\$15,001.00 or less of that do not exceed the gross sale limitation~~
14 **for cottage food products described in section 4102(5) for honey or**
15 **maple syrup. In such case, the** ~~If both the retail outlet and~~
16 **processing facility are exempt from licensure under this**
17 **subdivision, the** honey and maple syrup ~~shall~~ **must** have ~~labeling a~~
18 **label that is** substantially similar to ~~that~~ **the label** for cottage
19 food products ~~as described in section 4102(3).~~ **4102.**

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

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

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

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

28 (h) A mobile food establishment, such as an ice cream truck,
29 that offers only prepackaged, single-serving frozen desserts.

1 (i) An event not open to the general public held by a
2 nonprofit trade association representing food establishments,
3 suppliers, or manufacturers where limited food preparation takes
4 place for the purpose of advertising, displaying, promoting, and
5 sampling prepared food.

6 (j) A commercial fishing guide service that serves ~~lunch-food~~
7 to a party of not more than 12 clients on or adjacent to a body of
8 water, river, or stream while pursuing, catching, killing, taking,
9 or attempting to take fish. As used in this ~~subparagraph,~~
10 **subdivision**, "commercial fishing guide service" means a service
11 provided for a fee or other valuable consideration, regardless of
12 whether the fee or other valuable consideration is paid directly or
13 indirectly, to assist another person in pursuing, catching,
14 killing, taking, or attempting to take fish.

15 (k) A person ~~owning or operating~~ **that owns or operates** a
16 device that dispenses only bottled or canned soft drinks, ~~+~~ other
17 packaged nonperishable foods or beverages, ~~+~~ or bulk gum, nuts, and
18 panned candies.

19 (l) Feeding operations set up in response to an emergency or
20 disaster.

21 (m) A person ~~operating~~ **that operates** as a food warehouse or
22 food processor, if the food warehouse or food processor contains or
23 handles only uncut fruits or vegetables, or both, and meets all of
24 the following criteria:

25 (i) The establishment is owned and operated by the person
26 ~~producing~~ **that produces** the fruits or vegetables, or both.

27 (ii) Activities at the establishment are limited to storing,
28 grading, sorting, packing, washing, trimming, and refrigerating.

29 (iii) The fruits or vegetables, or both, are primarily from the

1 person's own production, and the balance are products of the same
2 genus or genera from other agricultural producers.

3 (iv) The food is not ~~"potentially hazardous food~~
4 ~~(time/temperature-a time/temperature control for safety food)"~~
5 **food, as that term is** defined in the food code.

6 (n) **An establishment that meets both of the following**
7 **requirements:**

8 (i) **Offers only food that is not a time/temperature control for**
9 **safety food, as that term is defined in the food code, and that**
10 **requires minimal preparation, such as coffee, tea, or popcorn.**

11 (ii) **Offers the food described under subparagraph (i) only as a**
12 **courtesy to customers at no charge.**

13 (o) **An individual who operates a location under the**
14 **requirements of 1978 PA 260, MCL 393.351 to 393.368.**

15 (2) Notwithstanding subsection (1)(a), a person ~~operating that~~
16 **operates** as or ~~conducting~~ **conducts** activities the director
17 considers to be a food establishment must be licensed in the
18 appropriate category under this act.

19 (3) If food **for immediate consumption** is prepared in a food
20 ~~service-establishment licensed under this chapter~~ and the food is
21 transported from the food ~~service-establishment~~ to a fixed
22 temporary serving location, the **fixed temporary** serving location is
23 not required to be separately licensed and is considered an
24 extension of the food ~~service-establishment~~ if no food preparation
25 is conducted at the serving location, **the food and standard**
26 **operating procedures are consistent with the procedures approved by**
27 **the local health department or department, as applicable,** and the
28 food is transported and served by employees of the food ~~service~~
29 establishment.

1 (4) If prepackaged food is transported from a food
2 establishment ~~licensed under this chapter~~ to a sales location at a
3 farmers' market, fair, or festival, the sales location is not
4 required to be separately licensed and is considered an extension
5 of the food establishment if the food is transported and sold by
6 employees of the food establishment.

7 (5) If prepackaged food is transported from a food
8 establishment ~~licensed under this chapter~~ to 1 or more vending
9 machine locations by employees of the food establishment and the
10 vending machine or machines are maintained by employees of the food
11 establishment, the vending machine locations are not required to be
12 separately licensed and are considered to be an extension of the
13 food establishment, which ~~shall~~**must** be separately licensed.
14 However, if the food establishment from which the prepackaged food
15 is transported is located in another state, both of the following
16 apply:

17 (a) One of the vending machine locations in this state ~~shall~~
18 **must** be separately licensed as a food establishment.

19 (b) The remaining vending machine locations in this state are
20 not required to be separately licensed and are considered to be an
21 extension of the food establishment under subdivision (a).

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

24 (a) Manufacture, sell, deliver, hold, or offer for sale
25 adulterated or misbranded food.

26 (b) Adulterate or misbrand food.

27 (c) Receive in commerce food that is adulterated or misbranded
28 and deliver or proffer the delivery of ~~that~~**the** food for pay or
29 otherwise.

1 (d) Sell, deliver for sale, hold for sale, or offer for sale
2 food unless that person ~~holds a license issued~~ **is licensed** under
3 chapter IV.

4 (e) Disseminate a false advertisement concerning food or a
5 food establishment.

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

8 (g) Give a false guaranty or undertaking concerning food,
9 unless in good-faith reliance on a guaranty or undertaking to the
10 same effect signed by and containing the name and address of the
11 person from whom the food was received.

12 (h) Remove or dispose of seized or embargoed food in violation
13 of section 2105.

14 (i) Alter, mutilate, destroy, obliterate, or remove all or
15 part of the label or do any other act with respect to a food while
16 the food is held for sale resulting in the food being adulterated
17 or misbranded.

18 (j) Forge, counterfeit, simulate, or falsely represent, or
19 without proper authority use any mark, stamp, tag, label, or other
20 identification device authorized or required by this act or rules.

21 (k) Permit filthy or unsanitary conditions to exist in a food
22 establishment in which food intended for human consumption is
23 manufactured, received, kept, stored, served, sold, or offered for
24 sale.

25 (l) Falsely identify a country, state, or other place of origin
26 of food on a label, tag, or other document with intent to deceive
27 or defraud.

28 (m) Fail to establish or maintain any record or make any
29 report required under this act or the federal act, or refuse to

1 permit access to or verification or copying of any ~~such~~ required
2 record.

3 (n) Interfere with the director ~~in the conduct of his or her~~
4 **conducting the director's** responsibilities under this act.

5 (o) Make a false statement, representation, or certification
6 **verbally or** in any application, report, plan, or other document
7 that is required to be maintained under this act or rules.

8 (p) Remove a tag, seal, or mark placed by the director.

9 (q) Operate without a license, registration, permit, or
10 endorsement.

11 (r) Violate a provision of this act or a rule.

12 (s) Operate as a shellfish dealer without a shellfish dealer
13 certificate.

14 (t) If the person is a food establishment, permit Michigan
15 ~~bridge card~~ **Bridge Card** access to food assistance program benefits
16 unless the food establishment's inventory records match redemption
17 files for Michigan ~~bridge card~~ **Bridge Card** usage for food
18 assistance program benefits and 1 or more of the following apply:

19 (i) The food for sale includes, on a continuous basis, at least
20 ~~3-7~~ varieties of foods, **with at least 3 units of each of the 7**
21 **varieties of foods**, in each of the following 4 staple food groups:
22 ~~and perishable foods in at least 2 of the groups:~~

23 (A) Meat, poultry, or fish.

24 (B) Bread or cereal.

25 (C) Vegetables or fruits.

26 (D) Dairy products.

27 (ii) At least 50% of the total ~~dollar amount of all~~ **gross**
28 retail sales ~~, including food and nonfood items, fuel, and services~~
29 at the food establishment is from the sale of **eligible food items**

1 in any of the 4 staple food groups.

2 **(iii) At least 84 eligible food items are not expired and**
3 **offered for sale on a continuous basis.**

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

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

9 (a) A temporary food establishment.

10 (b) A retail grocery.

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