Legislative Analysis

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FOOD LAW AMENDMENTS

House Bill 6128 as introduced
Sponsor: Rep. Emily Dievendorf

House Bill 6129 as introduced
Sponsor: Rep. Stephanie A. Young

House Bill 6130 as introduced
Sponsor: Rep. Veronica Paiz

House Bill 6131 as introduced
Sponsor: Rep. Reggie Miller

House Bill 6132 as introduced
Sponsor: Rep. Jasper Martus

House Bill 6133 as introduced
Sponsor: Rep. Kimberly Edwards

Committee: Agriculture
Complete to 12-10-24

SUMMARY:

House Bill 6128 would amend the Food Law, primarily to incorporate the provisions of the administrative rules regarding smoked fish[1] into statutory law.

The bill would also amend the definition of the term *foodborne illness outbreak* so that the two individuals who have ingested common foods no longer have to be residents of different households for the incident to potentially be considered a foodborne illness outbreak. The bill also would update a reference regarding procedures to be followed in the event of a suspected outbreak, so that procedures would be followed according to the sixth edition (instead of the fifth) of "Procedures to Investigate Foodborne Illness," published by the International Association for Food Protection.

Finally, the bill would repeal sections 5109 and 7103 of the act.[2]

MCL 289.3103 et seq. and MCL 289.5109 and 289.7103 (repealed)

House Bill 6129 would amend provisions of the Food Law that relate to inspections of food establishments.

The bill would exempt records provided by a food establishment in connection with developing, implementing, or verifying a food safety plan or practice under the Food Law from Freedom of Information Act (FOIA) requests and require that records released to a legislative body not contain identifying information. The exemption would not apply to documents, data, communications, reports, or other information required to be collected, maintained, or made

[1] https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=202_10189_AdminCode.pdf&ReturnHTML=True
[2] https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-289-5109 and https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-289-7103

available or reported to a state agency or any other person by statute, rule, ordinance, permit, order, or consent agreement or otherwise provided by law.

The bill would allow the Michigan Department of Agriculture and Rural Development (MDARD) to enter into agreements with state agencies, colleges, universities, and associations to implement the Food Law and to provide and accept food safety assistance, including the training of personnel. State law now only allows MDARD to enter into agreements with other states and the federal government.

The bill would amend provisions that relate to how local health departments handle license applications for food service establishments. Currently, local health departments are required to conduct *inspections* as part of the application process. Under the bill, *evaluations* would be conducted instead.

As part of the application for licensure as a food service establishment, an applicant must submit their planned hours of operation. For a mobile food establishment, the planned locations and dates of operation must be a part of the submitted information, both to MDRAD and the local health department. The bill would instead require that the route schedule be submitted as part of the application along with the hours and dates of service for each location listed in the route.

The bill would also change requirements relating to mobile food establishments to require a copy of the approved menu and standard operating procedures always to be carried on the mobile establishment, in addition to current licensure requirements. If the mobile food establishment crosses jurisdictional boundaries, it would have to provide to the local health department or MDARD (as applicable) each location in the jurisdiction where food will be served, along with the dates and hours of service, no less than four days before preparing or serving any food within the jurisdiction.

The bill would newly define the term ***major food allergen*** to mean any of the following:

- Milk.
- Eggs.
- Fish, including bass, flounder, or cod.
- Crustacean shellfish, including crab, lobster, or shrimp.
- Tree nuts, including almonds, pecans, or walnuts.
- Wheat.
- Peanuts.
- Soybeans.
- Sesame.
- A food ingredient that contains a protein derived from a food mentioned above, unless one of the following applies:
    - The ingredient is a highly refined oil or an ingredient that is derived from the highly refined oil.
    - The food ingredient is exempt under federal rules[3] as determined by the Secretary of the U.S. Department of Health and Human Services.

[3] 21 USC 343(w)(6) or (7): https://www.law.cornell.edu/uscode/text/21/343

The meaning of the term *misbranded* under the Food Law would be extended to include when an item's labeling fails to declare a major food allergen within the meaning of 21 USC 343(w) or if a product is shell eggs and it is not labeled in compliance with section 7114 of the Food Law.

The meaning of the term *low-risk food* would be amended so that, rather than being described as potentially hazardous or not, the definition would rely on whether a food must be controlled for time or temperature as defined in the Food Code.

The bill would newly define the term ***premises*** to mean one of the following:

- The physical facility, its contents, and the contiguous land or property under the control of the operator.
- The physical facility, its contents, and the land or property, if its facilities and contents are under the control of an operator and could impact the operator's employees, facilities, or operations, and the food establishment is only one component of a larger operation, such as a health care facility, hotel, motel, school, recreational camp, or prison.

The bill would change requirements regarding which food establishments need to employ a certified food protection manager, including requiring a retail food establishment that is rated a medium or high risk under MDARD policy to employ a certified food protection manager. If an establishment was not required to have a manager before the incorporation of the 2017 version of the federal Food Code into state law by reference (see HB 6130), that establishment would have until one year after the bill's effective date to have such a person on staff. All food establishments required to have a certified food protection manager would then have until two years after the bill's effective date to comply with the updated provisions of section 2-102.12 of the federal Food Code. The bill would allow MDARD to grant a statewide variance to a group of food establishments, or to an individual food establishment, by modifying or waiving requirements of the Food Law that relate to the certified food protection manager.

Finally, the bill would retain the state's adoption of Chapters 1 to 8 of the federal Food Code, while amending specific sections of those chapters to ensure that current state law requirements regarding specific programs continue, such as the state's mushroom identification certification program.

MCL 289.2105 et seq.

House Bill 6130 would amend the Food Law to incorporate the 2017 version of the federal Food, Drug, and Cosmetic into state law by reference. The Food Law now incorporates the version of the federal act in effect on October 1, 2012, by reference. A reference to which version of the "Model Ordinance, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish" is used would also be updated to reference the 2019 version instead of the 2009 version.

The bill also would amend the definition of the term ***food establishment*** to also mean an operation where food is otherwise provided to the public. In addition, the term now specifically excludes a food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or another facility where the facility is primary residence

for occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement. The bill would expand this exemption to also include instances where the food operation serves meals to staff of those facilities as part of their working arrangement.

MCL 289.1107 et seq.

House Bill 6131 amends provisions of the Food Law relating to the manufacture and sale of ***cottage food***. The bill would require a cottage food operation to list its name, phone number, and registration number on labels if it registers with the Michigan State University Product Center.[4] If the operation does not register with the center, it would need to continue to post the same information as presently required: business name, address, and phone number.

The bill would allow the MSU Product Center to issue a document that evidences the granting of registration and contains a unique ID number for the cottage food operation and collect a one-time fee of up to $50 for registration. MDARD could inspect the records of the center upon request. The information collected through the registration program would be exempt from FOIA.

Additionally, the bill would allow cottage food to be sold by internet or mail order if the operation ***directly interacts with*** the customer during the first sales transaction and provides the customer the opportunity for direct interaction during second or subsequent sales.

> ***Directly interact with*** would mean either a face-to-face or ***virtual meeting***.
>
> ***Virtual meeting*** would include a meeting where communication occurs electronically in a way that allows two-way communications so participants can see or be seen and hear or be heard by all parties to the communication.

Finally, the bill would increase the gross sales threshold for a cottage food operation from $25,000 to $45,000, with an operation which sells its products at a price of $250 or more per unit allowed to earn up to $75,000 in gross sales annually. Beginning October 1, 2025, MDARD could adjust the gross sales limit by an amount calculated by the Department of Treasury based on inflation (as measured in the Consumer Price Index) over the prior three-year period, rounded to the nearest whole dollar.

MCL 289.1105 and 289.4102

House Bill 6132 would amend the licensure fee structure for license types overseen by MDARD under the Food Law. Currently, if a local health department no longer conducts a food service program, MDARD, in consultation with the Commission of Agriculture and Rural Development, sets the food sanitation fee imposed for the conduct of the food service program by the department. The bill would remove a restriction on the fees so that they must equal, as nearly as possible, 50% of the department's cost of providing the service. The bill would also extend, from 12 months to 24 months, the length of time the department may impose service fees after the date of cessation by the local health department.

[4] MSU Product Center Website

The bill also would combine the Consumer Food Safety Education Fund and the Industry Food Safety Education Fund into a single fund, to be funded through a $3 fee on a food establishment license and a $2 fee on food service establishment licenses. These fee amounts would reflect what is currently charged in law to fund the respective funds. The industry fund would be abolished, and any remaining funds at the time the bill takes effect would go into the newly combined Consumer and Industry Food Safety Education Fund.

The bill would eliminate the maximum fine amount in the section of the Food Law that provides for fines for violations of the act.

The bill would amend provisions governing special transitory food unit licenses in several ways. First, the name of the license would be changed to the transitory food unit license. Second, an applicant for this license type would have to be licensed under the Food Law and receive at least one evaluation by a regulatory authority.

While in operation, a transitory food licensee must request and receive two evaluations per licensing year spaced generally over the span of the operating season. The local health department or MDARD can charge a fee of $90 for each evaluation. The bill would change this so not less than one month could pass between each evaluation, with at least one of the evaluations conducted by the regulatory authority that issued the license. The regulatory authority could still charge a fee, although a specific dollar amount would be removed from these provisions. The owner of the transitory food unit would have to put a decal provided by MDARD on the unit in a conspicuous place so it is visible to the public while serving food.

The bill also would prohibit a person from knowingly selling or offering for sale a shell egg that the person knows or should know is the product of an egg-laying hen that was improperly confined or restricted, as detailed in section 46 of the Animal Industry Act.[5] A person selling shell eggs from an egg-laying hen would be have to maintain a record of compliance, which would be valid for one year and would have to be kept for three years and be made available to MDARD for inspection upon request. Eggs shipped into Michigan for commercial sale would have to have documentation that demonstrates compliance with these provisions as well. Eggs that pass through the state and are not intended for sale in Michigan could be marked as such and exempt from the documentation requirement if appropriately marked in their shipping records.

All shell eggs sold in Michigan would have to be labeled or marked as being in compliance with the requirements of section 46 of the Animal Industry Act. A commercially recognized label or marking could be used and would not have to specifically reference the applicable section of Michigan law. MDARD could issue a list of commercially recognized labels for use in complying with the labeling requirement.

Michigan's requirements regarding minimum allowable room for movement of egg-laying hens take effect on December 31, 2024.

MCL 289.1111 er seq.

[5] https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-287-746

House Bill 6133 would amend he Food Law to change who has authority over inspecting certain food processor licensees. The bill would add language stating that, if a food processor is part of a food service establishment but the establishment is the predominant part of the business as determined by MDARD, then authority and responsibility could be transferred from the local health department back to MDARD. Specifically, this transfer could take place if the food processor processes for wholesale low acid canned food, acidified food, juice, seafood, fermented foods other than alcohol, or aseptic processed foods, or performs a process determined by MDARD to be complex. A food processor part of a food service establishment as described above could receive a separate license from MDARD, and would be responsible only for the $25 food service establishment fee listed in section 3119 of the Food Law.

Results of investigations of allegations of foodborne illness, if investigated by MDARD and not the local health department, would have to be shared with the local health department.

The bill also would amend provisions regarding MDARD's authority to revoke a local health department's certification and delegated authority. Presently, if a local health department fails to meet the requirements established in the Food Law, written notice is provided to the local health department within 30 days of its review by MDARD. These reviews are conducted as often as MDARD believes necessary. After written notice is provided, the health officer of the local health department may request a hearing with the director of MDARD. If no hearing is requested, certification is revoked within 30 days of notice being provided. If a hearing is requested, deficiencies may be addressed within the timeline specified at the hearing. If the specified timeline passes without the deficiencies being addressed, then certification is revoked at the end of that specified timeline.

House Bill 6133 would instead allow MDARD to revoke the health department's certification and delegated authority after providing at least 120 days' written notice to the local health department. A local health department could still apply for recertification.

The bill also modifies inventory requirements for a food establishment to be eligible to accept the Bridge Card for food assistance benefits. The bill would require that the food for sale offered within the establishment include, on a continuous basis, at least seven varieties of food (up from three varieties presently), with at least three units of each of the seven varieties from among the following four staple food groups already listed in statute (though no minimum unit count is currently specified):

- Meat, Poultry, or fish.
- Bread or cereal.
- Vegetables or fruits.
- Dairy products.

At least 50% of the total dollar amount of all retail sales, including food and nonfood items, fuel, and services at the food establishment now must come from the sale of food items in those four staple food groups. The bill would amend this so that at least 50% of gross retail sales at the establishment must come from the sale of eligible food items in any of the four staple groups. Lastly, for the revised Bridge Card eligibility, the establishment would have to have at least 84 eligible food items that are not expired and offered for sale on a continuous basis.

Other changes made by HB 6133 include:

- Removing an exemption for an establishment licensed under the Grain Dealers Act from also needing to be licensed under the Food Law.
- Exempting from licensure an establishment that offers only food that is not a time/temperature control for safety food and that requires minimal preparation, such as coffee, tea, or popcorn, with that food offered as a courtesy to customers at no charge.

MCL 289.3105 et seq.

BACKGROUND:

House Bill 6130 would amend the definition of *Food Code* to change the reference from the 2009 Food Code to the 2017 Food Code.[6] The Food Code represents the recommendations of the U.S. Food and Drug Administration (FDA), which regulates the design, construction, management, and operation of certain food establishments.

According to the FDA website, "the Food Code is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service." The Food Code is offered as a model for adoption by local, state, and federal governmental jurisdictions.

The 1999 Model Food Code, with some modifications, was incorporated by reference in Michigan's Food Law of 2000. MDARD indicates that "among other things, the 1999 Model Food Code established practical science-based advice and manageable, enforceable provisions for mitigating risk factors known to contribute to foodborne disease." Subsequently, the 2009 Food Code was incorporated by reference in 2012 amendments to Michigan's Food Law.

The Food Code is referenced in a number of sections of the Food Law.

FISCAL IMPACT:

MDARD representatives indicate that the bills would not have a material fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

[6] https://www.fda.gov/food/fda-food-code/food-code-2017