National Food Safety Board Act of 2027 (Senate version)

DISCUSSION DRAFT, November 28, 2026. Senate companion. Contains no authorization of appropriations, no pay provisions, and no monetary penalties.

120th CONGRESS, 1st Session

S. ____

To establish the National Food Safety Board as an independent agency to investigate foodborne illness outbreaks, determine their probable causes and contributing factors, and issue safety recommendations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

M__. _____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish the National Food Safety Board as an independent agency to investigate foodborne illness outbreaks, determine their probable causes and contributing factors, and issue safety recommendations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Food Safety Board Act of 2027".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

Sec. 4. Establishment and membership of the Board.

Sec. 5. Duties of the Board; investigations.

Sec. 6. Relationship to emergency response and to other agencies.

Sec. 7. Investigative authorities.

Sec. 8. Reports, public docket, and repository of lessons.

Sec. 9. Safety recommendations and required responses.

Sec. 10. Preservation of accountability; use of Board reports.

Sec. 11. Conflicts of interest.

Sec. 12. Affected persons and families.

Sec. 13. Disclosure and protection of information.

Sec. 14. Administration and personnel.

Sec. 15. Annual report to Congress.

Sec. 16. Rules of construction.

Sec. 17. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Foodborne illness sickens, hospitalizes, and kills people in the United States every year, and the burden falls hardest on children, older adults, pregnant women, and people with weakened immune systems.

(2) Compliance and safety are not synonymous. An inspection can establish that a requirement was not met. It does not establish why the condition developed, why warning signs were missed, why management did not intervene, or whether the applicable requirement was itself adequate.

(3) Foodborne illness outbreaks are most often failures of systems, in which equipment design, production pressure, supplier controls, traceability, and regulatory assumptions combine over time.

(4) The Federal and State agencies that write food safety requirements, conduct inspections, and accept corrective actions are the same agencies that investigate outbreaks, and their own conduct may be among the contributing factors.

(5) Enforcement and learning are different functions. Both are necessary, and neither should be a substitute for the other.

(6) Recommendations developed in past outbreak investigations have gone unimplemented because no person was required to respond to them and no public record tracked them.

(7) Unlike a transportation accident, a foodborne illness outbreak commonly leaves no physical wreckage. The food is consumed or discarded, illness appears days or weeks later, and records and samples are often held by private parties, including parties outside the United States.

(8) Most outbreak detection and investigation in the United States is carried out by State, local, Tribal, and territorial health agencies.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish an independent board to determine the probable cause and contributing factors of significant foodborne illness outbreaks;

(2) to ensure that the lessons of each outbreak are made public, preserved, and acted on;

(3) to complement, and not replace or diminish, the authorities of Federal, State, local, Tribal, and territorial agencies; and

(4) to preserve in full the rights of persons injured by unsafe food and the civil and criminal accountability of those responsible.

SEC. 3. DEFINITIONS.

In this Act:

(1) BOARD.—The term "Board" means the National Food Safety Board established by section 4.

(2) CHAIRPERSON.—The term "Chairperson" means the Chairperson of the Board.

(3) FOOD.—The term "food" has the meaning given the term in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)) and includes meat and meat food products, poultry and poultry products, and egg products subject to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

(4) FOODBORNE ILLNESS OUTBREAK.—The term "foodborne illness outbreak" means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a common food, or a single case of illness where the Board determines the circumstances warrant investigation.

(5) FOOD ENTITY.—The term "food entity" means any person that grows, harvests, manufactures, processes, packs, holds, transports, distributes, imports, or sells food, or that supplies water, inputs, equipment, auditing, or testing services to such a person.

(6) RESPONSE AGENCY.—The term "response agency" means the Food and Drug Administration, the Food Safety and Inspection Service, the Centers for Disease Control and Prevention, and any State, local, Tribal, or territorial agency with responsibility for responding to a foodborne illness outbreak.

(7) SAFETY RECOMMENDATION.—The term "safety recommendation" means a recommendation issued by the Board under section 9.

SEC. 4. ESTABLISHMENT AND MEMBERSHIP OF THE BOARD.

(a) ESTABLISHMENT.—There is established the National Food Safety Board, which shall be an independent establishment of the United States Government and shall not be a component of, or subject to the direction of, any other department or agency.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Board shall be composed of 5 members appointed by the President, by and with the advice and consent of the Senate.

(2) POLITICAL AFFILIATION.—Not more than 3 members may be of the same political party.

(3) REQUIRED SEATS.—Of the members of the Board—

(A) 1 shall be an individual who, at the time of appointment, is serving or has served within the preceding 2 years as an epidemiologist in a State, local, Tribal, or territorial health agency with direct responsibility for foodborne illness outbreak investigation;

(B) 1 shall be an individual with a demonstrated record of advocacy on behalf of persons injured by foodborne illness and their families, who has no financial interest in the outcome of any claim arising from a foodborne illness outbreak; and

(C) 3 shall be individuals appointed on the basis of technical qualification and professional standing in 1 or more of the fields of epidemiology, food microbiology, food engineering and equipment design, human and organizational performance, supply chain and traceability, or public health law.

(c) TERMS.—

(1) IN GENERAL.—The term of office of each member shall be 5 years.

(2) STAGGERED TERMS.—Of the members first appointed, 1 shall be appointed for a term of 1 year, 1 for a term of 2 years, 1 for a term of 3 years, 1 for a term of 4 years, and 1 for a term of 5 years, as designated by the President at the time of nomination.

(3) VACANCIES; HOLDOVER.—An individual appointed to fill a vacancy shall be appointed for the remainder of the term. A member may continue to serve after the expiration of the member's term until a successor is appointed and qualified.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—The President shall designate, by and with the advice and consent of the Senate, a Chairperson from among the members, and shall designate a Vice Chairperson, each to serve in that capacity for a term of 3 years.

(e) REMOVAL.—The President may remove a member only for inefficiency, neglect of duty, or malfeasance in office.

(f) QUORUM.—Three members shall constitute a quorum for the transaction of business.

SEC. 5. DUTIES OF THE BOARD; INVESTIGATIONS.

(a) IN GENERAL.—The Board shall investigate, and establish the facts, circumstances, probable cause, and contributing factors of, foodborne illness outbreaks described in subsection (b).

(b) MANDATORY INVESTIGATIONS.—The Board shall investigate any foodborne illness outbreak in which—

(1) 1 or more deaths are reported;

(2) 10 or more persons are hospitalized;

(3) illnesses are reported in 3 or more States and the total number of reported illnesses is 50 or more;

(4) the food implicated, or a food of the same type from the same food entity or growing region, was implicated in a foodborne illness outbreak during the preceding 5 years; or

(5) infant formula or food intended primarily for infants or young children is implicated and 1 or more illnesses are reported.

(c) DISCRETIONARY INVESTIGATIONS.—The Board may investigate any other foodborne illness outbreak, recall, or contamination event, or conduct a study of a recurring food safety hazard, if a majority of the Board determines that the investigation or study is likely to yield findings of value in preventing illness.

(d) PETITIONS.—Any State, local, Tribal, or territorial health officer, and any person who was made ill in a foodborne illness outbreak or a family member of such a person, may petition the Board to open an investigation. The Board shall respond in writing and make the response public not later than 30 days after receipt.

(e) UNRESOLVED OUTBREAKS.—The Board shall investigate under this section without regard to whether a food vehicle or source has been identified, and shall report on the reasons a vehicle or source was not identified.

(f) SCOPE.—In each investigation, the Board shall examine, as applicable—

(1) the conduct of each food entity involved, including decisions of management;

(2) the adequacy of applicable statutes, regulations, guidance, and private standards and audits; and

(3) the conduct of each response agency before and during the outbreak, including inspections, the acceptance of corrective actions, and the timeliness of public notice.

SEC. 6. RELATIONSHIP TO EMERGENCY RESPONSE AND TO OTHER AGENCIES.

(a) RESPONSE AGENCIES RETAIN THE LEAD.—Each response agency shall retain full responsibility for detecting a foodborne illness outbreak, identifying and tracing the implicated food, removing it from commerce, and notifying the public. The Board shall conduct its investigation concurrently with the emergency response and shall not direct, delay, or take priority over any action of a response agency to protect the public health.

(b) NOTICE TO THE BOARD.—Not later than 24 hours after a Federal response agency determines that a foodborne illness outbreak meets a criterion in section 5(b), the agency shall notify the Board.

(c) ACCESS TO AGENCY INFORMATION.—Each Federal response agency shall provide to the Board, not later than 5 business days after a request, all records relating to the outbreak and to the food entities involved, including epidemiologic data, laboratory isolates and sequence data, traceback records, inspection and audit reports, compliance history, and internal communications.

(d) STATE, LOCAL, TRIBAL, AND TERRITORIAL AGENCIES.—The Board shall coordinate with, and may enter into agreements with, State, local, Tribal, and territorial agencies for the sharing of information and the conduct of investigative work, and shall invite each such agency involved in an outbreak to participate in the investigation.

(e) MEMORANDA OF UNDERSTANDING.—Not later than 180 days after the date on which a quorum of the Board is first confirmed, the Board shall enter into a memorandum of understanding with each Federal response agency governing notification, information sharing, sample custody, and the avoidance of duplication.

(f) NO REGULATORY AUTHORITY.—The Board shall have no authority to issue regulations governing food, to order a recall, to detain or seize food, or to assess a penalty.

SEC. 7. INVESTIGATIVE AUTHORITIES.

(a) ENTRY, INSPECTION, AND SAMPLING.—An officer or employee of the Board, on presenting appropriate credentials, may—

(1) enter any farm, facility, vessel, vehicle, or other place where food implicated in an investigation is or was grown, manufactured, processed, packed, held, transported, or sold, and any adjacent or nearby land or operation, including an animal feeding operation, a water source, or a water conveyance, that the Board has reason to believe may be a source of contamination of that food;

(2) inspect and copy any record, in any form, relevant to the investigation, including records of testing, environmental monitoring, sanitation, maintenance, supplier approval, audits, complaints, production, distribution, and communications of management; and

(3) collect samples of food, water, soil, sediment, manure, animal feces, agricultural inputs, and environmental surfaces, and obtain isolates held by any laboratory.

(b) SUBPOENAS.—The Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of records, samples, and other evidence from any place in the United States. In the case of a failure to obey a subpoena, the Board may apply to a district court of the United States for an order enforcing it, and a failure to obey the order may be punished as contempt.

(c) PRESERVATION.—The Board may order any person to preserve records, food, isolates, and equipment relevant to an investigation for such period as the Board specifies.

(d) FOREIGN SUPPLIERS.—

(1) IMPORTERS.—An importer of food implicated in an investigation shall produce, on request of the Board, all records of the foreign supplier of the food that are within the importer's possession, custody, or control, including records the importer has a contractual right to obtain.

(2) ACCESS.—The Board may request entry to, and records and samples from, a foreign food entity whose food is implicated in an investigation.

(3) REFUSAL.—If a foreign food entity refuses a request under paragraph (2), the Board shall publish notice of the refusal and notify the Secretary of Health and Human Services and the Secretary of Agriculture, and the refusal shall be treated as a refusal to permit inspection for purposes of section 807(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384c(b)) and as grounds for refusal of entry under the applicable provisions of law administered by the Secretary of Agriculture.

(e) HEARINGS AND SWORN TESTIMONY.—The Board may hold public hearings, administer oaths, and take depositions. All testimony before the Board shall be given under oath and transcribed, and each transcript shall be placed in the public docket. Section 1001 of title 18, United States Code, applies to any statement or record provided to the Board.

(f) PROTECTION OF EMPLOYEES.—No food entity may discharge or otherwise discriminate against an employee, contractor, or auditor because that individual provided information to the Board or assisted in an investigation. An individual aggrieved under this subsection may seek relief under the procedures of section 1012 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399d).

(g) PROHIBITED ACTS.—It shall be unlawful to refuse entry, access, or sampling authorized by a warrant issued under subsection (h), to fail to comply with a preservation order, or to knowingly destroy, alter, or conceal evidence relevant to an investigation. The Attorney General may bring an action in a district court of the United States to enjoin a violation of this subsection and to compel compliance.

(h) INSPECTION WARRANTS.—If entry, access, or sampling under subsection (a) is refused, or the Board has reason to believe it will be refused, the Board may apply to a district court of the United States or a United States magistrate judge for a warrant authorizing the entry, inspection, and sampling. The court shall issue the warrant on a showing that the place to be entered is described in subsection (a)(1) with respect to an open investigation of the Board. A showing of probable cause to believe that a violation of law has occurred shall not be required.

SEC. 8. REPORTS, PUBLIC DOCKET, AND REPOSITORY OF LESSONS.

(a) PRELIMINARY REPORT.—Not later than 60 days after opening an investigation, the Board shall publish a preliminary report of the facts then known.

(b) FINAL REPORT.—Not later than 12 months after opening an investigation, the Board shall adopt by majority vote and publish a final report that includes—

(1) the facts and circumstances of the outbreak;

(2) the probable cause, or a statement of why a probable cause could not be determined;

(3) each contributing factor, including any act or omission of a food entity, an auditor, or a response agency, and any inadequacy in an applicable statute, regulation, guidance, or standard; and

(4) safety recommendations.

(c) EXTENSION.—If the Board cannot meet the deadline in subsection (b), it shall publish a statement of the reasons and a new date, and shall update that statement every 90 days.

(d) SEPARATE VIEWS.—Any member may file a concurring or dissenting statement, which shall be published with the report.

(e) PUBLIC DOCKET.—For each investigation the Board shall maintain a public docket containing the factual record, including records obtained, laboratory results, interview summaries, and hearing transcripts, subject only to section 13.

(f) REPOSITORY.—The Board shall maintain a permanent, free, searchable public database of every report, docket, finding of probable cause, contributing factor, and safety recommendation.

SEC. 9. SAFETY RECOMMENDATIONS AND REQUIRED RESPONSES.

(a) NAMED ADDRESSEE.—Each safety recommendation shall be addressed to 1 or more named recipients, which may include a Federal agency, a State, local, Tribal, or territorial agency, a food entity, a trade association, an auditing or certification body, or a standards organization. The Board may issue an urgent safety recommendation at any time during an investigation.

(b) RESPONSE REQUIRED.—Not later than 90 days after receiving a safety recommendation, or 30 days in the case of an urgent safety recommendation, each Federal agency and each food entity to which it is addressed shall respond to the Board in writing, stating that the recipient—

(1) will adopt the recommendation in full, with a timetable for completion;

(2) will adopt the recommendation in part, with a timetable and the reasons for not adopting the remainder; or

(3) declines to adopt the recommendation, with a detailed statement of reasons.

(c) PUBLICATION.—The Board shall publish each response, shall classify each recommendation as open or closed and each response as acceptable or unacceptable, and shall keep the status of every recommendation current in the database required by section 8(f).

(d) ANNUAL LIST.—Not later than February 1 of each year, the Board shall publish and transmit to Congress a list of—

(1) each recipient that failed to respond within the time required by subsection (b);

(2) each recommendation that remains open more than 2 years after issuance, with the name of the recipient; and

(3) the recommendations the Board considers most important to preventing illness and death.

(e) FEDERAL AGENCIES.—The head of a Federal agency named on the list under subsection (d)(1) or (d)(2) shall, not later than 60 days after publication of the list, submit to the appropriate committees of Congress a written explanation.

(f) FAILURE OF A FOOD ENTITY TO RESPOND.—If a food entity fails to respond as required by subsection (b), the Board shall publish notice of the failure and may apply to a district court of the United States for an order compelling a response.

SEC. 10. PRESERVATION OF ACCOUNTABILITY; USE OF BOARD REPORTS.

(a) NO IMMUNITY.—Except as provided in subsection (i), nothing in this Act, and no cooperation with the Board, shall confer on any person immunity from, or a defense to, civil liability, criminal prosecution, or administrative enforcement under any Federal or State law.

(b) ADMISSIBILITY.—A report of the Board, including its findings of probable cause and contributing factors, and any material in a public docket of the Board, shall not be excluded from evidence or from use in any civil, criminal, or administrative proceeding on the ground that it was prepared or obtained by the Board. Section 1154(b) of title 49, United States Code, and any similar limitation, shall not apply to the Board.

(c) DISCOVERABLE; NO PRIVILEGE.—Each report and finding of the Board, and all records, samples, test results, testimony, and transcripts obtained or created by the Board, shall be subject to discovery and may be used in any civil action, subject only to section 12(c). No privilege or protection from discovery or disclosure is created by this Act, and no court shall recognize a self-critical analysis privilege or any

similar privilege with respect to information provided to the Board. Information provided to the Board by a food entity remains discoverable from that entity to the same extent as if it had not been provided.

(d) NOT BINDING.—A finding of the Board is not a determination of the legal rights or liabilities of any person and shall not have preclusive effect in any proceeding.

(e) NO STAY.—The pendency of a Board investigation shall not be grounds for staying or delaying any civil action, criminal prosecution, or enforcement proceeding.

(f) TESTIMONY OF BOARD PERSONNEL.—An employee of the Board may be required to testify in a civil action as to facts observed in an investigation, by deposition taken once, under regulations of the Board that prevent undue interference with its work.

(g) REFERRAL.—If the Board obtains evidence that a violation of Federal or State law may have occurred, it shall promptly refer the evidence to the Attorney General, the appropriate Federal response agency, or the appropriate State authority, and shall continue its investigation.

(h) NO PREEMPTION.—Nothing in this Act preempts or limits any right or remedy under State law.

(i) COMPELLED TESTIMONY OF INDIVIDUALS.—

(1) IN GENERAL.—An individual may not refuse to testify before the Board on the basis of the privilege against self-incrimination if the Board, by majority vote and with the approval of the Attorney General, orders the individual to testify. Testimony compelled under such an order, and information directly or indirectly derived from that testimony, may not be used against that individual in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(2) LIMITS.—Paragraph (1)—

(A) applies only to an individual, and not to a corporation, partnership, or other entity;

(B) does not apply to any record, sample, or other evidence, whether or not produced by the individual;

(C) does not limit the use of any testimony or evidence in any civil or administrative proceeding; and

(D) does not bar the prosecution of the individual on the basis of evidence obtained independently of the compelled testimony.

SEC. 11. CONFLICTS OF INTEREST.

(a) FINANCIAL INTERESTS.—No member or employee of the Board may hold a financial interest in, or receive compensation from, a food entity, or an entity that audits, certifies, insures, or represents food entities.

(b) LITIGATION INTERESTS.—No individual may serve as a member or employee of the Board, or as an expert or consultant to the Board, who—

(1) has a financial interest in the outcome of any claim arising from a foodborne illness; or

(2) during the preceding 2 years received compensation for representing or advising any party, whether plaintiff or defendant, in a claim arising from a foodborne illness.

(c) RECUSAL.—A member or employee shall not participate in an investigation involving a food entity, or a response agency office, that employed or compensated that individual during the preceding 2 years.

(d) NO PARTY PARTICIPATION IN ANALYSIS.—A food entity, a trade association, and a response agency whose conduct is under examination may provide information to the Board and may submit comments on the factual accuracy of a draft report, which shall be placed in the public docket. None shall participate in the analysis, the determination of probable cause, or the drafting of a report.

(e) POST-SERVICE RESTRICTION.—For 2 years after leaving the Board, a former member or employee may not represent or advise any person, for compensation, in a matter that the Board investigated during that individual's service.

SEC. 12. AFFECTED PERSONS AND FAMILIES.

(a) OFFICE.—There is established within the Board an Office of Affected Persons and Families, headed by a director who reports to the Chairperson.

(b) RIGHTS.—A person made ill in a foodborne illness outbreak under investigation, and the family of such a person or of a person who died, shall be entitled to—

(1) notice of the opening of the investigation, of each public hearing, and of each report before its public release;

(2) a named point of contact at the Board;

(3) the opportunity to submit information and a written statement to the public docket and to be heard at any public hearing; and

(4) access to the public docket without charge.

(c) PRIVACY.—The Board shall not disclose the identity or medical information of any such person without written consent.

(d) NO WAIVER.—Participation in a Board investigation shall not waive or limit any claim or right of any person. No food entity may condition any payment or settlement on a person's refusal to provide information to the Board, and any such condition is void.

SEC. 13. DISCLOSURE AND PROTECTION OF INFORMATION.

(a) PRESUMPTION OF DISCLOSURE.—Records obtained or created by the Board in an investigation shall be made public in the docket required by section 8(e), except as provided in this section.

(b) PROTECTED INFORMATION.—The Board shall withhold from the public docket—

(1) information that would identify a person made ill, or that person's medical information, without consent; and

(2) a trade secret, as described in section 1905 of title 18, United States Code.

(c) LIMIT ON TRADE SECRET CLAIMS.—For purposes of this Act, the following shall not be treated as a trade secret or as confidential commercial information: test results for pathogens or indicator

organisms; environmental monitoring and sanitation records; inspection and audit findings; consumer complaints; the identity of a supplier, grower, or customer of food implicated in an outbreak; and distribution records of that food.

(d) PUBLIC HEALTH EXCEPTION.—The Board may disclose information described in subsection (b)(2) if a majority of the Board determines that disclosure is necessary to protect the public health, after notice to the person that submitted the information.

SEC. 14. ADMINISTRATION AND PERSONNEL.

(a) CHAIRPERSON.—The Chairperson shall be the chief executive and administrative officer of the Board.

(b) STAFF.—The Board may appoint such officers and employees as are necessary, and shall maintain investigative staff with expertise in epidemiology, microbiology, laboratory science, food engineering and equipment design, human and organizational performance, supply chains, and data science.

(c) EXPERTS AND DETAILEES.—The Board may procure the services of experts and consultants under section 3109 of title 5, United States Code, and may accept the detail of personnel from any Federal agency, or from a State, local, Tribal, or territorial agency under subchapter VI of chapter 33 of that title.

(d) LABORATORIES.—The Board may use, by agreement, the laboratories of Federal and State agencies and of universities, and may contract with private laboratories that have no conflict of interest.

(e) REGULATIONS.—The Board may issue such regulations as are necessary to carry out this Act.

SEC. 15. ANNUAL REPORT TO CONGRESS.

Not later than February 1 of each year, the Board shall submit to Congress and publish a report that includes—

(1) each investigation opened, pending, and completed during the preceding year;

(2) each petition received under section 5(d) and its disposition;

(3) the list required by section 9(d);

(4) each instance in which a person, a food entity, a foreign food entity, or a Federal agency refused or delayed access to information; and

(5) recommendations for legislation.

SEC. 16. RULES OF CONSTRUCTION.

Nothing in this Act shall be construed—

(1) to limit or transfer any authority of the Secretary of Health and Human Services, the Secretary of Agriculture, the Director of the Centers for Disease Control and Prevention, or any State, local, Tribal, or territorial agency;

(2) to limit the authority of the Attorney General or of any State to investigate or prosecute a violation of law; or

(3) to require any response agency to await a finding of the Board before acting to protect the public health.

SEC. 17. EFFECTIVE DATE.

This Act shall take effect on the date of enactment. The Board shall begin investigations under section 5 with respect to foodborne illness outbreaks first reported on or after the date that is 180 days after the date on which a quorum of the Board is first confirmed.