

# HOUSE BILL No. 4707

June 7, 2011, Introduced by Reps. Tlaib, Slavons, Brown, Bauer, Santana, Darany and Hovey-Wright and referred to the Committee on Regulatory Reform.

A bill to amend 2000 PA 92, entitled  
"Food law of 2000,"  
by amending section 1109 (MCL 289.1109), as amended by 2007 PA 113,  
and by adding section 6153.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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) "INCENTIVE ITEM", SUBJECT TO SUBDIVISION (C), MEANS ANY OF THE FOLLOWING:

(i) A TOY, GAME, TRADING CARD, ADMISSION TICKET, OR OTHER CONSUMER PRODUCT, WHETHER PHYSICAL OR DIGITAL, WITH PARTICULAR APPEAL TO INDIVIDUALS UNDER 18 YEARS OF AGE.

(ii) A COUPON, VOUCHER, TICKET, TOKEN, CODE, OR PASSWORD REDEEMABLE FOR OR GRANTING DIGITAL OR OTHER ACCESS TO AN ITEM LISTED IN SUBPARAGRAPH (i).

(C) "INCENTIVE ITEM" DOES NOT INCLUDE A UTENSIL, TABLEWARE, A CARRYOUT UTENSIL, A BULK FOOD CONTAINER, OR OTHER ITEM, SUCH AS A BAG, CONTAINER, PLACEMAT, STIRRER, STRAW, TOOTHPICK, OR WRAPPER, THAT IS DESIGNED AND CONSTRUCTED FOR A SINGLE USE BY 1 INDIVIDUAL BEFORE BEING DISCARDED.

(D) ~~(b)~~—"Inspection" means the checking or testing of observable practices against standards established in or adopted by this act, accompanied by a report of findings.

(E) ~~(e)~~—"Juice" means the aqueous liquid expressed or extracted from 1 or more fruits or vegetables, ~~purees~~ **A PUREE** of the edible portions of 1 or more fruits or vegetables, or ~~any~~ ~~concentrates~~ **A CONCENTRATE** of **ANY** such liquid or puree.

(F) ~~(d)~~—"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.

(G) ~~(e)~~—"Labeling" means all labels and other written, printed, or graphic matter upon an article, any of its containers

1 or wrappers, or accompanying the article.

2 (H) ~~(f)~~ "License limitation" means an action by which the  
3 director imposes restrictions or conditions, or both, on a license  
4 of a food establishment.

5 (I) ~~(g)~~ "License holder" means the entity that is legally  
6 responsible for the operation of the food establishment, including  
7 the owner, the owner's agent, or other person operating under  
8 apparent authority of the owner, ~~possessing~~ **AND THAT POSSESSES** a  
9 valid license to operate a food establishment.

10 (J) ~~(h)~~ "Limited wholesale food processor" means a wholesale  
11 food processor that ~~has~~ **HAD IN THE PRECEDING LICENSING YEAR OR IS**  
12 **REASONABLY ANTICIPATED TO HAVE IN THE CURRENT LICENSING YEAR**  
13 \$25,000.00 or less in annual gross wholesale sales made or business  
14 done in wholesale sales. ~~in the preceding licensing year, or~~  
15 ~~\$25,000.00 or less of the food is reasonably anticipated to be sold~~  
16 ~~for the current licensing year.~~ Only the food sales from the  
17 wholesale food processor operation ~~are~~ **SHALL BE** used in computing  
18 the annual gross sales under this subdivision.

19 (K) ~~(i)~~ "Local health department" means that term as defined  
20 in section 1105 of the public health code, MCL 333.1105, and having  
21 those powers and duties as described in part 24 of the public  
22 health code, MCL 333.2401 to 333.2498.

23 (L) **"MEAL", UNLESS THE CONTEXT CLEARLY IMPLIES OTHERWISE, MEANS**  
24 **ANY COMBINATION OF 2 OR MORE NONBEVERAGE FOOD ITEMS OFFERED**  
25 **TOGETHER FOR A SINGLE PRICE. THE SINGLE PRICE MAY ALSO INCLUDE THE**  
26 **PRICE OF A BEVERAGE.**

27 (M) ~~(j)~~ "Milk product" means cream, light cream, light

1 whipping cream, heavy cream, heavy whipping cream, whipped cream,  
 2 whipped light cream, sour cream, acidified sour cream, cultured  
 3 sour cream, half-and-half, sour half-and-half, acidified sour half-  
 4 and-half, cultured sour half-and-half, reconstituted or recombined  
 5 milk and milk products, concentrated milk, concentrated milk  
 6 products, skim milk, lowfat milk, frozen milk concentrate, eggnog,  
 7 buttermilk, cultured milk, cultured lowfat milk, cultured skim  
 8 milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk,  
 9 acidified lowfat milk, acidified skim milk, low-sodium milk, low-  
 10 sodium lowfat milk, low-sodium skim milk, lactose-reduced milk,  
 11 lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically  
 12 processed and packaged milk, milk products with added safe and  
 13 suitable microbial organisms, and any other milk product made by  
 14 the addition or subtraction of milkfat or addition of safe and  
 15 suitable optional ingredients for protein, vitamin, or mineral  
 16 fortification. Milk product ~~does include~~ **INCLUDES** dietary dairy  
 17 products, dairy-based infant formula, ice cream and other frozen  
 18 desserts, cheese, butter, and any other product derived from milk.

19 (N) ~~(k)~~ "Misbranded" means food to which any of the following  
 20 apply:

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

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

23 (iii) ~~It~~ **IF IT** is an imitation of another food, ~~unless~~ its label  
 24 bears, **DOES NOT BEAR**, in type of uniform size and prominence, the  
 25 word "imitation" and immediately thereafter the name of the food  
 26 imitated.

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

1 misleading.

2 (v) ~~It~~ **IF IT** is in package form, ~~unless it bears~~ **IT DOES NOT**  
 3 **BEAR** a label containing both the name and place of business of the  
 4 manufacturer, packer, or distributor and an accurate statement of  
 5 the quantity of the contents in terms of weight, measure, or  
 6 numerical count subject to reasonable variations as are permitted  
 7 and exemptions as to small packages as are established by rules  
 8 prescribed by the department.

9 (vi) Any word, statement, or other labeling required by this  
 10 act is not ~~prominently~~ placed on the **FOOD'S** label or labeling  
 11 **PROMINENTLY**, conspicuously, and in such terms as to render it  
 12 likely to be read and understood by the ordinary individual under  
 13 customary conditions of purchase and use.

14 (vii) ~~It purports to be or~~ **IF IT** is represented as a food for  
 15 which a definition and standard of identity have been prescribed by  
 16 rules as provided by this act or under the federal act, ~~unless it~~  
 17 ~~conforms to such~~ **DOES NOT CONFORM TO THE** definition and standard  
 18 ~~and~~ **OR** its label ~~bears~~ **DOES NOT BEAR** the name of the food specified  
 19 in the definition and standard, and, insofar as ~~may be required by~~  
 20 the rules **REQUIRE**, the common names of optional ingredients, other  
 21 than spices, flavoring, and coloring, present in such food.

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

24 (A) A food for which a standard of quality has been prescribed  
 25 by this act or rules ~~and~~ **IF** its quality falls below ~~such~~ **THAT**  
 26 standard, unless its label bears, in ~~such~~ **THE** manner and form ~~as~~  
 27 ~~such rules specify,~~ **SPECIFIED BY RULE**, a statement that it falls

1 below ~~such~~**THE** standard.

2 (B) A food for which a standard or standards of fill of  
3 container have been prescribed by this act or rules and it falls  
4 below the standard of fill of container applicable, unless its  
5 label bears, in ~~such~~**THE** manner and form ~~as the rules specify,~~  
6 **SPECIFIED BY RULE**, a statement that it falls below the standard.

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

16 (x) It bears or contains any artificial flavoring, artificial  
17 coloring, or chemical preservative ~~unless~~**AND** the labeling ~~states~~  
18 **DOES NOT STATE** that fact, ~~and under other~~**EXCEPT UNDER**  
19 circumstances ~~as established~~**SPECIFIED** by rules regarding  
20 exemptions based upon practicality.

21 (xi) ~~If a food~~ **IT IS** intended for human consumption and offered  
22 for sale, **AND** its label and labeling do not bear the nutrition  
23 information required under section 403(q) of the federal act, 21  
24 USC 343.

25 (xii) It is a product intended as an ingredient of another food  
26 and, when used according to the directions of the purveyor, will  
27 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 **APPLICABLE** packaging and labeling requirements ~~applicable to such color additive prescribed under the provisions of the federal act.~~

(O) ~~(I)~~ "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.

(P) ~~(m)~~ "Mobile food establishment commissary" means an operation that is capable of servicing a mobile food establishment.

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

(R) ~~(o)~~ "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, 7 USC 136 to 136y, and is used in the production, storage, or transportation of raw agricultural commodities.

(S) ~~(p)~~ "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.

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

**SEC. 6153. (1) A FOOD SERVICE ESTABLISHMENT SHALL NOT PROVIDE A FREE INCENTIVE ITEM IN CONJUNCTION WITH THE PURCHASE OF A MEAL UNLESS THE MEAL MEETS ALL OF THE FOLLOWING REQUIREMENTS:**

**(A) DOES NOT CONTAIN MORE THAN ANY OF THE FOLLOWING:**

1 (i) 600 CALORIES.

2 (ii) 650 MILLIGRAMS OF SODIUM.

3 (iii) 35% OF TOTAL CALORIES FROM FAT, EXCEPT FOR FAT CONTAINED  
4 IN NUTS, SEEDS, PEANUT BUTTER OR OTHER NUT BUTTERS; IN AN  
5 INDIVIDUALLY SERVED OR PACKAGED EGG; OR IN INDIVIDUALLY SERVED OR  
6 PACKAGED LOW-FAT OR REDUCED FAT CHEESE.

7 (iv) 10% OF TOTAL CALORIES FROM SATURATED FATS, EXCEPT FOR  
8 SATURATED FAT CONTAINED IN NUTS, SEEDS, PEANUT BUTTER OR OTHER NUT  
9 BUTTERS; IN AN INDIVIDUALLY SERVED OR PACKAGED EGG; OR IN  
10 INDIVIDUALLY SERVED OR PACKAGED LOW-FAT OR REDUCED FAT CHEESE.

11 (v) 0.5 GRAMS OF TRANS FAT.

12 (B) CONTAINS AT LEAST 0.5 CUP OF FRUIT AND 0.75 CUP OF  
13 VEGETABLES. HOWEVER, IF THE MEAL IS SERVED AS BREAKFAST AND  
14 CONSISTS OF FOOD TYPICALLY CONSIDERED TO BE BREAKFAST ITEMS, THE  
15 MEAL SHALL CONTAIN AT LEAST 0.5 CUP OF FRUIT OR VEGETABLES.

16 (2) A FOOD SERVICE ESTABLISHMENT SHALL NOT PROVIDE A FREE  
17 INCENTIVE ITEM IN CONJUNCTION WITH THE PURCHASE OF A MEAL AND  
18 BEVERAGE OR IN CONJUNCTION WITH THE PURCHASE OF A BEVERAGE ALONE  
19 UNLESS THE BEVERAGE DOES NOT CONTAIN MORE THAN ANY OF THE  
20 FOLLOWING:

21 (A) 35% OF TOTAL CALORIES FROM FAT.

22 (B) 10% OF CALORIES FROM ADDED SWEETENERS.

23 (3) A FOOD SERVICE ESTABLISHMENT SHALL NOT PROVIDE A FREE  
24 INCENTIVE ITEM IN CONJUNCTION WITH THE PURCHASE OF A SINGLE FOOD  
25 ITEM UNLESS THE SINGLE FOOD ITEM DOES NOT CONTAIN MORE THAN ANY OF  
26 THE FOLLOWING:

27 (A) 35% OF TOTAL CALORIES FROM FAT.

1 (B) 10% OF TOTAL CALORIES FROM ADDED SWEETENERS.