

SENATE BILL No. 144

February 18, 2015, Introduced by Senator CASPERSON and referred to the Committee on Agriculture.

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1109, 2129, and 3115 (MCL 289.1109, 289.2129,
and 289.3115), sections 1109 and 2129 as amended by 2012 PA 178.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1109. As used in this act:

2 (a) "Guide for the control of molluscan shellfish" means
3 section II, model ordinance, national shellfish sanitation program
4 guide for the control of molluscan shellfish, 2009, recommendations
5 of the U.S. ~~department of health and human services, public health~~
6 ~~service, food and drug administration.~~ **DEPARTMENT OF HEALTH AND**
7 **HUMAN SERVICES, PUBLIC HEALTH SERVICE, FOOD AND DRUG**
8 **ADMINISTRATION.**

1 (b) "HACCP plan" means a written document that delineates the
2 formal procedures for following the hazard analysis and critical
3 control point principles developed by the ~~national advisory~~
4 ~~committee on microbiological criteria for foods.~~ **NATIONAL ADVISORY**
5 **COMMITTEE ON MICROBIOLOGICAL CRITERIA FOR FOODS.**

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

9 (d) "Inspection" means the checking or testing of observable
10 practices against standards established in or adopted by this act,
11 accompanied by a report of findings.

12 (e) "Juice" means the aqueous liquid expressed or extracted
13 from 1 or more fruits or vegetables, purees of the edible portions
14 of 1 or more fruits or vegetables, or any concentrates of such
15 liquid or puree.

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

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

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

1 (i) "License holder" means the person who is legally
2 responsible for the operation of a food establishment including the
3 owner, the owner's agent, or other person operating under apparent
4 authority of the owner and who possesses a valid license to operate
5 a food establishment.

6 (j) "Limited food processor" means a food processor that had
7 in the preceding licensing year or is reasonably anticipated to
8 have in the current licensing year \$25,000.00 or less in annual
9 gross wholesale sales made or business done in wholesale sales.
10 Only the food sales from the food processor operation shall be used
11 in computing the annual gross sales under this subdivision.

12 (k) "Local health department" means that term as defined in
13 section 1105 of the public health code, MCL 333.1105, and having
14 those powers and duties as described in part 24 of the public
15 health code, MCL 333.2401 to 333.2498.

16 **(l) "LOW-RISK FOOD" MEANS ANY OF THE FOLLOWING:**

17 **(i) RAW OR PREPACKAGED FOOD THAT IS NOT POTENTIALLY HAZARDOUS**
18 **FOOD (NOT TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) .**

19 **(ii) POTENTIALLY HAZARDOUS FOOD THAT IS PREPARED IN A LICENSED**
20 **FACILITY AND IS NOT PREPARED ON-SITE.**

21 **(iii) COMMERCIALY PROCESSED POTENTIALLY HAZARDOUS FOOD THAT IS**
22 **HEATED ONLY FOR HOT HOLDING.**

23 **(iv) POTENTIALLY HAZARDOUS FOOD THAT IS NOT COOLED ON-SITE.**

24 **(M) ~~(l)~~**"Michigan bridge card" means the card used for the
25 electronic benefit transfer system for food stamp distribution
26 required under section 14h of the social welfare act, 1939 PA 280,
27 MCL 400.14h.

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

20 (O) ~~(n)~~—"Misbranded" means food to which any of the following
21 apply:

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

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

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

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

1 misleading.

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

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

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

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

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

27 (B) A food for which a standard or standards of fill of

1 container have been prescribed by this act or rules and that falls
2 below the standard of fill of container applicable, unless its
3 label bears, in ~~such~~**THE** manner and form ~~as~~**THAT** the rules specify,
4 a statement that it falls below the standard.

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

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

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

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

23 (xiii) It is a color additive whose packaging and labeling are
24 not in conformity with **APPLICABLE** packaging and labeling
25 requirements ~~applicable to such color additive prescribed under the~~
26 federal act.

27 (P) ~~(e)~~—"Mobile food establishment" means a food establishment

1 operating from a vehicle, including a watercraft, that returns to a
2 mobile food establishment commissary for servicing and maintenance
3 at least once every 24 hours.

4 (Q) ~~(p)~~—"Mobile food establishment commissary" means an
5 operation that is capable of servicing a mobile food establishment.

6 (R) ~~(q)~~—"Nonperishable food" means food that is not perishable
7 food.

8 (S) ~~(r)~~—"Perishable food" means any food that the
9 manufacturer, packer, or retailer, in conjunction with the
10 department, determines to have a significant risk of spoilage, loss
11 of value, or loss of palatability within 90 days of the date of
12 packaging.

13 (T) ~~(s)~~—"Person" means an individual, sole proprietorship,
14 partnership, corporation, association, or other legal entity.

15 (U) ~~(t)~~—"Pesticide chemical" means any substance that, alone,
16 in chemical combination, or in formulation with 1 or more other
17 substances, is a pesticide within the meaning of the federal
18 insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and
19 is used in the production, storage, or transportation of raw
20 agricultural commodities.

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

24 (W) ~~(v)~~—"Priority foundation item" means a provision in the
25 food code whose application supports, facilitates, or enables 1 or
26 more priority items. Priority foundation item includes an item that
27 requires the purposeful incorporation of specific actions,

1 equipment, or procedures by industry management to attain control
 2 of risk factors that contribute to foodborne illness or injury such
 3 as personnel training, infrastructure, or necessary equipment,
 4 HACCP plans, documentation or record-keeping, and labeling. A
 5 priority foundation item is an item that is denoted in the food
 6 code with a superscript Pf-^{Pf}.

7 (X) ~~(w)~~ "Priority item" means a provision in the food code
 8 whose application contributes directly to the elimination,
 9 prevention, or reduction to an acceptable level of hazards
 10 associated with foodborne illness or injury if there is no other
 11 provision that more directly controls the hazard. Priority item
 12 includes an item with a quantifiable measure to show control of
 13 hazards such as cooking, reheating, cooling, or hand washing. A
 14 priority item is an item that is denoted in the food code with a
 15 superscript P-^P.

16 (Y) ~~(x)~~ "Public health code" means 1978 PA 368, MCL 333.1101
 17 to 333.25211.

18 Sec. 2129. (1) All of the following food establishments shall
 19 employ a minimum of 1 managerial employee who is currently
 20 certified under a personnel certification program accredited by the
 21 American ~~national standards institute, utilizing the conference for~~
 22 ~~food protection~~ **NATIONAL STANDARDS INSTITUTE, UTILIZING THE**
 23 **CONFERENCE FOR FOOD PROTECTION** standards:

24 (a) A food service establishment ~~that is not any~~ **UNLESS 1 OR**
 25 **MORE** of the following **APPLY TO THE FOOD SERVICE ESTABLISHMENT:**

26 (i) ~~Operating~~ **IT OPERATES** under a temporary food service
 27 establishment license.

1 (ii) ~~A IT IS A~~ vending machine location.

2 (iii) **IT SERVES ONLY LOW-RISK FOODS.**

3 (b) An extended retail food establishment.

4 (c) ~~Operated A~~ **FOOD SERVICE ESTABLISHMENT OPERATED** within a
5 retail grocery.

6 (2) An individual certified ~~under~~ **AS DESCRIBED IN** subsection
7 (1) shall be recognized with full faith and credit by ~~the~~ **THIS**
8 state and all local units of government throughout ~~the~~ **THIS** state.

9 (3) The department may promulgate rules to do all of the
10 following:

11 (a) Develop requirements for retail food establishments to
12 follow when employing certified food safety managers or personnel.

13 (b) Set a reasonable date for compliance with the requirements
14 under subdivision (a), taking into consideration existing local
15 personnel certification requirements.

16 (c) Establish certification fees necessary to implement,
17 maintain, and track certified individuals directly or by contract.
18 The department may annually adjust the schedule of fees to provide
19 that the fee charged is sufficient to cover the cost of the
20 certification tracking program.

21 (d) Implement and enforce the requirements described in
22 subdivision (a).

23 (4) The certification program developed by the American
24 ~~national standards institute,~~ **NATIONAL STANDARDS INSTITUTE**, as it
25 exists on April 1, 2008, is incorporated by reference. The
26 department may adopt updates to the certification program
27 accreditation standards in subsection (1) by rule.

1 (5) This section does not prohibit ~~any~~ **A** local legislative
2 body from implementing a food handler program, an employee health
3 certification program, or a manager certification program, if it is
4 not in conflict with this section.

5 Sec. 3115. (1) A local health department shall promptly review
6 a license application for a food service establishment, ~~or~~
7 **INCLUDING, BUT NOT LIMITED TO, A** vending machine location, to
8 determine if the application is complete and accurate. A local
9 health department may return an incomplete or inaccurate
10 application to a license applicant and request any additional
11 information it considers necessary to assure completeness or
12 accuracy of the application.

13 (2) ~~After~~ **SUBJECT TO SUBSECTION (3), AFTER** a local health
14 department determines that an application is proper, complete, and
15 accurate, it shall inspect the proposed or existing food service
16 establishment, ~~or~~ **INCLUDING, BUT NOT LIMITED TO, A** vending machine
17 location, to determine compliance with this act. The **LOCAL HEALTH**
18 **DEPARTMENT SHALL CONDUCT THE** inspection ~~shall be conducted by the~~
19 ~~local health department~~ before it makes a recommendation to the
20 department on the issuance of a license.

21 (3) **IF A TEMPORARY FOOD ESTABLISHMENT WILL SERVE ONLY LOW-RISK**
22 **FOOD, THE LOCAL HEALTH DEPARTMENT, BASED ON A PUBLIC HEALTH RISK**
23 **ASSESSMENT, MAY CONDUCT AN IN-OFFICE CONSULTATION, INCLUDING FOOD**
24 **SAFETY EDUCATION, AND OPERATIONAL REVIEW OF THE PROPOSED TEMPORARY**
25 **FOOD ESTABLISHMENT WITH THE LICENSE APPLICANT AND WAIVE THE**
26 **INSPECTION UNDER SUBSECTION (2). THE PERSON IN CHARGE OF THE**
27 **TEMPORARY FOOD ESTABLISHMENT SHALL BE PRESENT DURING THE IN-OFFICE**

1 **CONSULTATION.**

2 (4) ~~(3)~~—A local health department shall forward **TO THE**
3 **DEPARTMENT** its recommendation for **LICENSE** approval ~~of the license~~
4 or approval with limitation. ~~of the license to the department.~~

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.