

**SUBSTITUTE FOR
SENATE BILL NO. 144**

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), section 1109 as amended by 2012 PA 178 and section
2129 as amended by 2014 PA 516.

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 (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD).**

19 (ii) **POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR**
20 **SAFETY FOOD) THAT IS PREPARED IN A LICENSED FACILITY AND IS NOT**
21 **PREPARED ON-SITE.**

22 (iii) **COMMERCIALY PROCESSED POTENTIALLY HAZARDOUS FOOD**
23 **(TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) THAT IS FULLY COOKED AND**
24 **HEATED ONLY FOR HOT HOLDING.**

25 (iv) **POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR**
26 **SAFETY FOOD) THAT IS NOT COOLED.**

27 (M) ~~(l)~~—"Michigan bridge card" means the card used for the

1 electronic benefit transfer system for food stamp distribution
2 required under section 14h of the social welfare act, 1939 PA 280,
3 MCL 400.14h.

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

23 **(O)** ~~(n)~~—"Misbranded" means food to which any of the following
24 apply:

- 25 (i) Its labeling is false or misleading in any particular.
26 (ii) It is offered for sale under the name of another food.
27 (iii) It is an imitation of another food unless its label bears,

1 in type of uniform size and prominence, the word "imitation" and
2 immediately thereafter the name of the food imitated.

3 (iv) Its container is so made, formed, or filled as to be
4 misleading.

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

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

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

24 (viii) It purports to be or is represented to be either of the
25 following:

26 (A) A food for which a standard of quality has been prescribed
27 by this act or rules if its quality falls below the standard unless

1 its label bears, in ~~such~~**THE** manner and form as ~~such~~**THAT THE** rules
2 specify, a statement that it falls below ~~such~~**THE** standard.

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

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

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

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

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

26 (xiii) It is a color additive whose packaging and labeling are
27 not in conformity with **APPLICABLE** packaging and labeling

1 requirements ~~applicable to such color additive prescribed~~ under the
2 federal act.

3 (P) ~~(e)~~—"Mobile food establishment" means a food establishment
4 operating from a vehicle, including a watercraft, that returns to a
5 mobile food establishment commissary for servicing and maintenance
6 at least once every 24 hours.

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

9 (R) ~~(q)~~—"Nonperishable food" means food that is not perishable
10 food.

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

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

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

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

27 (W) ~~(v)~~—"Priority foundation item" means a provision in the

1 food code whose application supports, facilitates, or enables 1 or
 2 more priority items. Priority foundation item includes an item that
 3 requires the purposeful incorporation of specific actions,
 4 equipment, or procedures by industry management to attain control
 5 of risk factors that contribute to foodborne illness or injury such
 6 as personnel training, infrastructure, or necessary equipment,
 7 HACCP plans, documentation or record-keeping, and labeling. A
 8 priority foundation item is an item that is denoted in the food
 9 code with a superscript Pf-^{Pf}.

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

19 (Y) ~~(x)~~—"Public health code" means 1978 PA 368, MCL 333.1101
 20 to 333.25211.

21 Sec. 2129. (1) Subject to subsection (2), all of the following
 22 food establishments shall employ a minimum of 1 managerial employee
 23 as a food safety manager, who **MUST BE AN INDIVIDUAL WHO** is
 24 currently certified under a personnel certification program
 25 accredited by the American ~~national standards institute,~~ **NATIONAL**
 26 **STANDARDS INSTITUTE**, utilizing the conference for food protection
 27 standards:

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

3 (i) ~~A-IT IS A~~ licensed temporary food service establishment.

4 (ii) ~~A-IT IS A~~ vending machine.

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

6 (b) An extended retail food establishment.

7 (c) A food service establishment operated within a retail
8 grocery.

9 (2) ~~Beginning 2 years after the effective date of the 2014~~
10 ~~amendatory act that amended this section~~ **JANUARY 14, 2017** and every
11 5 years thereafter, a certified food safety manager who supervises
12 the operations of a food service establishment shall have completed
13 a food safety training program containing an allergen awareness
14 component that has been approved by the department. The allergen
15 awareness component may be an online program or a video. However, a
16 certified food safety manager at a food service establishment with
17 more than 20 locations within this state may satisfy this
18 requirement by completing any nationally recognized food safety
19 training program containing an allergen awareness component. A food
20 service establishment shall retain records on the site of the food
21 service establishment documenting compliance of its certified food
22 safety managers with this subsection. The department shall enforce
23 this subsection in the same manner that it enforces other
24 provisions related to certified food safety managers. This
25 subsection applies until December 31, 2020.

26 (3) An individual certified under subsection (1) shall be
27 recognized with full faith and credit by ~~the~~ **THIS** state and all

1 local units of government throughout ~~the~~**THIS** state.

2 (4) The department may promulgate rules to do all of the
3 following:

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

6 (b) Set a reasonable date for compliance with the requirements
7 under subdivision (a) taking into consideration existing local
8 personnel certification requirements.

9 (c) Establish certification fees necessary to implement,
10 maintain, and track certified individuals directly or by contract.
11 The department may annually adjust the schedule of fees to provide
12 that the fee charged is sufficient to cover the cost of the
13 certification tracking program.

14 (d) Implement and enforce the requirements developed under
15 subdivision (a).

16 (5) The certification program developed by the American
17 ~~national standards institute,~~**NATIONAL STANDARDS INSTITUTE**, as it
18 exists on April 1, 2008, is incorporated by reference. The
19 department may adopt updates to the certification program
20 accreditation standards in subsection (1) by rule.

21 (6) This section does not prohibit ~~any~~**A** local legislative
22 body from implementing a food handler program, an employee health
23 certification program, or a manager certification program, if it is
24 not in conflict with this section.

25 Sec. 3115. (1) A local health department shall promptly review
26 a license application for a food service establishment, ~~or~~
27 **INCLUDING, BUT NOT LIMITED TO, A** vending machine location, to

1 determine if the application is complete and accurate. A local
2 health department may return an incomplete or inaccurate
3 application to a license applicant and request any additional
4 information it considers necessary to assure completeness or
5 accuracy of the application.

6 (2) ~~After~~ **SUBJECT TO SUBSECTION (3), AFTER** a local health
7 department determines that an application **UNDER SUBSECTION (1)** is
8 proper, complete, and accurate, it shall inspect the proposed or
9 existing food service establishment, ~~or~~ **INCLUDING, BUT NOT LIMITED**
10 **TO, A** vending machine location, to determine compliance with this
11 act. ~~The inspection shall be conducted by the local health~~
12 ~~department before it makes a recommendation to the department on~~
13 ~~the issuance of a license.~~

14 (3) **IF A TEMPORARY FOOD ESTABLISHMENT WILL SERVE ONLY LOW-RISK**
15 **FOOD, INSTEAD OF CONDUCTING AN INSPECTION UNDER SUBSECTION (2), A**
16 **LOCAL HEALTH DEPARTMENT, BASED ON A PUBLIC HEALTH RISK ASSESSMENT,**
17 **MAY CONDUCT AN IN-OFFICE CONSULTATION, INCLUDING FOOD SAFETY**
18 **EDUCATION, AND OPERATIONAL REVIEW OF THE PROPOSED TEMPORARY FOOD**
19 **ESTABLISHMENT WITH THE LICENSE APPLICANT. THE PERSON IN CHARGE OF**
20 **THE TEMPORARY FOOD ESTABLISHMENT MUST BE PRESENT DURING THE IN-**
21 **OFFICE CONSULTATION. A LOCAL HEALTH DEPARTMENT THAT CONDUCTS AN IN-**
22 **OFFICE CONSULTATION UNDER THIS SUBSECTION MAY ALSO CONDUCT AN**
23 **INSPECTION UNDER SUBSECTION (2).**

24 (4) A LOCAL HEALTH DEPARTMENT SHALL CONDUCT AN INSPECTION
25 UNDER SUBSECTION (2) OR AN IN-OFFICE CONSULTATION UNDER SUBSECTION
26 (3), AS APPLICABLE, BEFORE IT MAKES ITS RECOMMENDATION TO THE
27 DEPARTMENT ON THE ISSUANCE OF A LICENSE.

1 (5) ~~(3)~~A local health department shall forward **TO THE**
2 **DEPARTMENT** its recommendation for **LICENSE** approval ~~of the license~~
3 or approval with limitation. ~~of the license to the department.~~

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