

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

1 MCL 400.14h.

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

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

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

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

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

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

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

9 (vi) Any word, statement, date, or other labeling required by
10 this act is not ~~prominently~~ placed on the 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 is represented as a food for which a
15 definition and standard of identity have been prescribed by
16 regulations promulgated under the federal act or by rules, unless
17 it conforms to the definition and standard and its label bears the
18 name of the food specified in the definition and standard, and,
19 insofar as may be required by the regulations or rules, the common
20 names of optional ingredients, other than spices, flavoring, and
21 coloring, present in the 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 if its quality falls below the standard unless
26 its label bears, in ~~such~~**THE** manner and form as ~~such~~**THAT THE** rules
27 specify, a statement that it falls below ~~such~~**THE** standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (b) An extended retail food establishment.

4 (c) A food service establishment operated within a retail
5 grocery.

6 (2) Beginning ~~2 years after the effective date of the 2014~~
7 ~~amendatory act that amended this section~~ **JANUARY 14, 2017** and every
8 5 years thereafter, a certified food safety manager who supervises
9 the operations of a food service establishment shall have completed
10 a food safety training program containing an allergen awareness
11 component that has been approved by the department. The allergen
12 awareness component may be an online program or a video. However, a
13 certified food safety manager at a food service establishment with
14 more than 20 locations within this state may satisfy this
15 requirement by completing any nationally recognized food safety
16 training program containing an allergen awareness component. A food
17 service establishment shall retain records on the site of the food
18 service establishment documenting compliance of its certified food
19 safety managers with this subsection. The department shall enforce
20 this subsection in the same manner that it enforces other
21 provisions related to certified food safety managers. This
22 subsection applies until December 31, 2020.

23 (3) An individual certified under subsection (1) shall be
24 recognized with full faith and credit by ~~the~~**THIS** state and all
25 local units of government throughout ~~the~~**THIS** state.

26 (4) The department may promulgate rules to do all of the
27 following:

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

3 (b) Set a reasonable date for compliance with the requirements
4 under subdivision (a) taking into consideration existing local
5 personnel certification requirements.

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

11 (d) Implement and enforce the requirements developed under
12 subdivision (a).

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

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

22 Sec. 3115. (1) A local health department shall promptly review
23 a license application for a food service establishment, ~~or~~
24 **INCLUDING, BUT NOT LIMITED TO, A** vending machine location, to
25 determine if the application is complete and accurate. A local
26 health department may return an incomplete or inaccurate
27 application to a license applicant and request any additional

1 information it considers necessary to assure completeness or
2 accuracy of the application.

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

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

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

25 (5) ~~(3)~~ **A local health department shall forward TO THE**
26 **DEPARTMENT** its recommendation for **LICENSE** approval ~~of the license~~
27 ~~or approval with limitation. of the license to the department.~~

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