

Act No. 142
Public Acts of 2015
Approved by the Governor
October 13, 2015
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senator Casperson

ENROLLED SENATE BILL No. 144

AN ACT to amend 2000 PA 92, entitled “An act to codify the licensure and regulation of certain persons engaged in processing, manufacturing, production, packing, preparing, repacking, canning, preserving, freezing, fabricating, storing, selling, serving, or offering for sale food or drink for human consumption; to prescribe powers and duties of the department of agriculture and rural development; to provide for delegation of certain powers and duties to certain local units of government; to provide exemptions; to regulate the labeling, manufacture, distribution, and sale of food for protection of the consuming public and to prevent fraud and deception by prohibiting the misbranding, adulteration, manufacture, distribution, and sale of foods in violation of this act; to provide standards for food products and food establishments; to provide for immunity to certain persons under certain circumstances; to provide for enforcement of the act; to provide penalties and remedies for violation of the act; to provide for fees; to provide for promulgation of rules; and to repeal acts and parts of acts,” 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:

Sec. 1109. As used in this act:

(a) “Guide for the control of molluscan shellfish” means section II, model ordinance, national shellfish sanitation program guide for the control of molluscan shellfish, 2009, recommendations of the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

(b) “HACCP plan” means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

(c) “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.

(d) “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) “Juice” means the aqueous liquid expressed or extracted from 1 or more fruits or vegetables, purees of the edible portions of 1 or more fruits or vegetables, or any concentrates of such liquid or puree.

(f) “Label” means a display of written, printed, or graphic matter on 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) “Labeling” means all labels and other written, printed, or graphic matter upon an article, any of its containers or wrappers, or accompanying the article.

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

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

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

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

(l) "Low-risk food" means any of the following:

(i) Raw or prepackaged food that is not potentially hazardous food (time/temperature control for safety food).

(ii) Potentially hazardous food (time/temperature control for safety food) that is prepared in a licensed facility and is not prepared on-site.

(iii) Commercially processed potentially hazardous food (time/temperature control for safety food) that is fully cooked and heated only for hot holding.

(m) "Michigan bridge card" means the card used for the electronic benefit transfer system for food stamp distribution required under section 14h of the social welfare act, 1939 PA 280, MCL 400.14h.

(n) "Milk product" means cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk product includes dietary dairy products, dairy-based infant formula, ice cream and other frozen desserts, cheese, butter, and any other product derived from milk.

(o) "Misbranded" means food to which any of the following apply:

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

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

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

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

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

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

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

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

(A) A food for which a standard of quality has been prescribed by this act or rules if its quality falls below the standard unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and that falls below the standard of fill of container applicable, unless its label bears, in the manner and form that the rules specify, a statement that it falls below the standard.

(ix) It does not bear labeling clearly giving the common or usual name of the food, if one exists, and if fabricated from 2 or more ingredients, the common or usual name of each ingredient except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each and except

under other circumstances as established by rules regarding exemptions based upon practicality, potential deception, or unfair competition.

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

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

(xii) It is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will 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 under the federal act.

(p) "Mobile food establishment" means a food establishment operating from a vehicle, including a watercraft, that returns to a mobile food establishment commissary for servicing and maintenance at least once every 24 hours.

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

(r) "Nonperishable food" means food that is not perishable food.

(s) "Perishable food" means any food that the manufacturer, packer, or retailer, in conjunction with the department, determines to have a significant risk of spoilage, loss of value, or loss of palatability within 90 days of the date of packaging.

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

(u) "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.

(v) "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.

(w) "Priority foundation item" means a provision in the food code whose application supports, facilitates, or enables 1 or more priority items. Priority foundation item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record-keeping, and labeling. A priority foundation item is an item that is denoted in the food code with a superscript Pf-Pf.

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

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

Sec. 2129. (1) Subject to subsection (2), all of the following food establishments shall employ a minimum of 1 managerial employee as a food safety manager, who must be an individual who is currently certified under a personnel certification program accredited by the American National Standards Institute, utilizing the conference for food protection standards:

(a) A food service establishment unless 1 or both of the following apply to the food establishment:

(i) It is a licensed temporary food service establishment.

(ii) It is a vending machine.

(b) An extended retail food establishment.

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

(2) Beginning January 14, 2017 and every 5 years thereafter, a certified food safety manager who supervises the operations of a food service establishment shall have completed a food safety training program containing an allergen awareness component that has been approved by the department. The allergen awareness component may be an online program or a video. However, a certified food safety manager at a food service establishment with more than 20 locations within this state may satisfy this requirement by completing any nationally recognized food safety training program containing an allergen awareness component. A food service establishment shall retain records on the site of the food service establishment documenting compliance of its certified food safety managers with this subsection. The department shall enforce this subsection in the same manner that it enforces other provisions related to certified food safety managers. This subsection applies until December 31, 2020.

(3) An individual certified under subsection (1) shall be recognized with full faith and credit by this state and all local units of government throughout this state.

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

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

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

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

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

(5) The certification program developed by the American National Standards Institute, as it exists on April 1, 2008, is incorporated by reference. The department may adopt updates to the certification program accreditation standards in subsection (1) by rule.

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

Sec. 3115. (1) A local health department shall promptly review a license application for a food service establishment, including, but not limited to, a vending machine location, to determine if the application is complete and accurate. A local health department may return an incomplete or inaccurate application to a license applicant and request any additional information it considers necessary to assure completeness or accuracy of the application.

(2) Subject to subsection (3), after a local health department determines that an application under subsection (1) is proper, complete, and accurate, it shall inspect the proposed or existing food service establishment, including, but not limited to, a vending machine location, to determine compliance with this act.

(3) If a temporary food establishment will serve only low-risk food, instead of conducting an inspection under subsection (2), a local health department, based on a public health risk assessment, may conduct an in-office consultation, including food safety education, and operational review of the proposed temporary food establishment with the license applicant. The person in charge of the temporary food establishment must be present during the in-office consultation. A local health department that conducts an in-office consultation under this subsection may also conduct an inspection under subsection (2).

(4) A local health department shall conduct an inspection under subsection (2) or an in-office consultation under subsection (3), as applicable, before it makes its recommendation to the department on the issuance of a license.

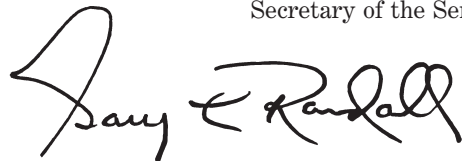
(5) A local health department shall forward to the department its recommendation for license approval or approval with limitation.

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor