

HB-4811, As Passed House, March 13, 2018
HB-4811, As Passed Senate, March 8, 2018

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4811**

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1109, 1111, 3119, 4103, and 7112 (MCL
289.1109, 289.1111, 289.3119, 289.4103, and 289.7112), section 1109
as amended by 2015 PA 142, sections 1111 and 3119 as amended by
2016 PA 188, and section 4103 as amended and section 7112 as added
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.

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.

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

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

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

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

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

24 **(H) "LICENSE HOLDER" MEANS THE PERSON WHO IS LEGALLY**
25 **RESPONSIBLE FOR THE OPERATION OF A FOOD ESTABLISHMENT INCLUDING THE**
26 **OWNER, THE OWNER'S AGENT, OR OTHER PERSON OPERATING UNDER APPARENT**
27 **AUTHORITY OF THE OWNER AND WHO POSSESSES A VALID LICENSE TO OPERATE**

1 **A FOOD ESTABLISHMENT.**

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

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

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

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

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

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

26 (iii) Commercially processed potentially hazardous food
27 (time/temperature control for safety food) that is fully cooked and

1 heated only for hot holding.

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

6 (N) "MICRO MARKET" MEANS AN OPERATION THAT DOES ALL OF THE
7 FOLLOWING:

8 (i) OFFERS FOR SALE COMMERCIALY PREPACKAGED FOODS PROPERLY
9 LABELED FOR INDIVIDUAL SALE AS REQUIRED UNDER SECTION 3-201.11(C)
10 OF THE FOOD CODE, EXCEPT AS PROVIDED UNDER SECTION 3-302.11(B)(1),
11 AND DOES NOT OFFER BULK FOOD FOR SALE.

12 (ii) USES AN AUTOMATED PAYMENT SYSTEM.

13 (iii) CONTROLS THE ENTRY TO THE OPERATION SO THAT THE
14 OPERATION IS ACCESSIBLE ONLY BY A DEFINED POPULATION AND IS NOT
15 ACCESSIBLE BY THE GENERAL PUBLIC.

16 (iv) LIMITS CONSUMER FOOD PREPARATION TO HEATING OR REHEATING
17 FOOD IN A MICROWAVE OVEN.

18 (v) UTILIZES CONTINUOUS VIDEO SURVEILLANCE OF AREAS WHERE
19 CONSUMERS VIEW, SELECT, HANDLE, AND PURCHASE FOOD. AN OPERATION
20 DOES NOT SATISFY THIS SUBPARAGRAPH IF THE VIDEO SURVEILLANCE IS NOT
21 OF SUFFICIENT RESOLUTION TO ALLOW FOR THE IDENTIFICATION OF
22 SITUATIONS THAT MAY COMPROMISE FOOD SAFETY OR FOOD DEFENSE.

23 (vi) IF THE OPERATION USES A REFRIGERATOR UNIT OR FREEZER
24 UNIT, THE OPERATION ONLY USES A UNIT THAT HAS BOTH OF THE FOLLOWING
25 FEATURES:

26 (A) SELF-CLOSING DOORS THAT ALLOW FOOD TO BE VIEWED WITHOUT
27 OPENING THE DOOR.

1 **(B) AN AUTOMATIC SELF-LOCKING MECHANISM THAT PREVENTS THE**
2 **CONSUMER FROM ACCESSING THE FOOD IF THE REFRIGERATION UNIT FAILS TO**
3 **MAINTAIN THE INTERNAL PRODUCT TEMPERATURE SPECIFIED UNDER SECTION**
4 **3-501.16(A) (2) OF THE FOOD CODE OR THE FREEZER UNIT FAILS TO**
5 **MAINTAIN THE FOOD FROZEN.**

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

25 **(P)** ~~(e)~~—"Misbranded" means food to which any of the following
26 apply:

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

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

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

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

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

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

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

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

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

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

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

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

22 (xi) If a food intended for human consumption and offered for
23 sale, its label and labeling do not bear the nutrition information
24 required under section ~~403(q)~~**343(Q)** of the federal act, 21 USC
25 343.

26 (xii) It is a product intended as an ingredient of another
27 food and, when used according to the directions of the purveyor,

1 will result in the final food product being adulterated or
2 misbranded.

3 (xiii) It is a color additive whose packaging and labeling are
4 not in conformity with applicable packaging and labeling
5 requirements under the federal act.

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

10 (R) ~~(q)~~—"Mobile food establishment commissary" means an
11 operation that is capable of servicing a mobile food establishment.

12 (S) ~~(r)~~—"Nonperishable food" means food that is not perishable
13 food.

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

19 (U) ~~(t)~~—"Person" means an individual, sole proprietorship,
20 partnership, corporation, association, or other legal entity.

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

27 (W) ~~(v)~~—"Principal display panel" means that part of a label

1 that is most likely to be displayed, presented, shown, or examined
2 under normal and customary conditions of display for retail sale.

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

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

22 **(Z)** ~~(y)~~—"Public health code" means 1978 PA 368, MCL 333.1101
23 to 333.25211.

24 Sec. 1111. As used in this act:

25 (a) "Raw agricultural commodity" means any food in its raw or
26 natural state including fruits that are washed, colored, or
27 otherwise treated in their unpeeled natural form before marketing.

1 (b) "Regulatory authority" means the department, the local
2 health department, or the authorized representative having
3 jurisdiction over the food establishment.

4 (c) "Retail food establishment" means an operation that sells
5 or offers to sell food directly to a consumer. Retail food
6 establishment includes both a retail grocery and a food service
7 establishment, but does not include a food processor.

8 (d) "Retail grocery" means an operation that sells or offers
9 to sell food to consumers for off-premises consumption. Food for
10 off-premises consumption does not include take-out food intended
11 for immediate consumption.

12 (e) "Rules" means administrative rules promulgated under this
13 act pursuant to the administrative procedures act of 1969, 1969 PA
14 306, MCL 24.201 to 24.328.

15 (f) "Shellfish dealer" means an interstate wholesaler handling
16 shellfish.

17 (g) "Shellfish dealer certification" means the issuance of a
18 numbered certificate to a person indicating that the person is in
19 compliance with the requirements of the guide for the control of
20 molluscan shellfish and that the person has permission from the
21 department to conduct 1 or more of the following shellfish
22 activities, as defined in the guide for the control of molluscan
23 shellfish:

24 (i) Shellstock shipper.

25 (ii) Shucker packer.

26 (iii) Repacker or reshipper.

27 (h) "Smoked fish rules" means R 285.569.1 to **R** 285.569.19 of

1 the Michigan Administrative Code.

2 (i) "Special transitory food unit" means a temporary food
3 establishment that is licensed to operate throughout the state
4 without the 14-day limits or a mobile food establishment that is
5 not required to return to a commissary.

6 (j) "Staple foods" does not include accessory foods such as
7 coffee, tea, cocoa, soda, noncarbonated drinks such as sports
8 drinks, punches, and flavored waters, candy, condiments, spices,
9 hot foods, or foods ready to go or made to take out, such as
10 prepared sandwiches or salads.

11 (k) "Sulfiting agents" means any of the following:

12 (i) Sulfur dioxide.

13 (ii) Sodium sulfite.

14 (iii) Sodium bisulfite.

15 (iv) Potassium bisulfite.

16 (v) Sodium metabisulfite.

17 (vi) Potassium metabisulfite.

18 (l) "Temporary food establishment" means a food establishment
19 that operates at a fixed location for a temporary period not to
20 exceed 14 consecutive days.

21 (m) "Temporary license" means a written authorization issued
22 by the director to operate for a specified limited time period.

23 (n) "Transient tenant" means a person who rents a room in a
24 bed and breakfast for fewer than 30 consecutive days.

25 (o) "Trimming" means removing leaves, roots, and other
26 extraneous materials in preparation for grading, sorting, and sale
27 as a whole fruit or vegetable. Trimming does not remove the peel or

1 core and does not further cut the whole fruit or vegetable.

2 (p) "U.S. standards for shell eggs" means "United States
3 Standards, Grades, and Weight Classes for Shell Eggs", AMS 56 (July
4 20, 2000), United States Department of Agriculture.

5 (q) "Vending company base location" means a vending machine
6 location or other food establishment required to be separately
7 licensed under section 4105(5).

8 (r) "Vending machine" means a self-service device that, upon
9 insertion of a coin, paper currency, token, card, or key, or by
10 manual operation, dispenses unit servings of food in bulk or in
11 packages without the necessity of replenishing the device between
12 each vending operation. Vending machine does not include any of the
13 following:

14 (i) A device that dispenses only bottled or canned soft
15 drinks; other packaged nonperishable foods or beverages; or bulk
16 ball gum, nuts, and panned candies.

17 (ii) A water-dispensing machine that is registered under
18 chapter IV.

19 (s) "Vending machine location" means the room, enclosure,
20 space, or area in which 1 or more vending machines are installed
21 and operated, **OR A MICRO MARKET.**

22 (t) "Wholesale" means selling other than directly to
23 consumers.

24 (u) "Wild game" means animals from their natural state and not
25 cultivated, domesticated, or tamed.

26 Sec. 3119. (1) ~~Except~~ **UNTIL DECEMBER 31, 2023, AND EXCEPT** as
27 otherwise provided for in subsection (2), upon submission of an

1 application, an applicant for a food service establishment license
 2 shall pay to the local health department having jurisdiction the
 3 required fees authorized by section 2444 of the public health code,
 4 MCL 333.2444, and an additional state license fee as follows:

- 5 (a) Temporary food service establishment..... \$ ~~3.00~~ **4.00**.
- 6 (b) Food service establishment..... \$ ~~22.00~~ **25.00**.
- 7 (c) Mobile food establishment commissary..... \$ ~~22.00~~ **25.00**.
- 8 (d) Special transitory food unit..... \$ ~~35.00~~ **39.00**.

9 (2) When licensing a special transitory food unit, a local
 10 health department shall impose a fee of ~~\$135.00~~, **\$150.00**, which
 11 includes the additional state license fee imposed under subsection
 12 (1) unless exempted under subsection (4) or (5).

13 (3) The state license fee required under subsection (1) ~~shall~~
 14 **MUST** be collected by the local health department at the time the
 15 license application is submitted. The state license fee is due and
 16 payable by the local health department to the state within 60 days
 17 after the fee is collected.

18 (4) A charitable, religious, fraternal, service, civic, or
 19 other nonprofit organization that has tax-exempt status under
 20 section 501(c)(3) of the internal revenue code, 26 USC 501, is
 21 exempt from paying additional state license fees imposed under this
 22 section. This subsection does not restrict the ability of the
 23 governing board of a local health department or authority to fix,
 24 revoke, or amend fees as further authorized and described under
 25 section 2444 of the public health code, MCL 333.2444. An
 26 organization seeking an exemption under this subsection shall
 27 furnish to the department or a local health department evidence of

1 its tax-exempt status.

2 (5) A veteran who has a waiver of a license fee under the
3 circumstances described in 1921 PA 359, MCL 35.441 to 35.443, is
4 exempt from paying the fees prescribed in this section.

5 ~~—— (6) The department shall adjust on an annual basis the fees~~
6 ~~prescribed by subsections (1) and (2) by an amount determined by~~
7 ~~the state treasurer to reflect the cumulative annual percentage~~
8 ~~change in the Detroit consumer price index but not to exceed 5%. As~~
9 ~~used in this subsection, "Detroit consumer price index" means the~~
10 ~~most comprehensive index of consumer prices available for the~~
11 ~~Detroit area from the Bureau of Labor Statistics of the United~~
12 ~~States Department of Labor or its successor. The adjustment shall~~
13 ~~be rounded to the nearest dollar to set each year's fee under this~~
14 ~~subsection, but the absolute value shall be carried over and used~~
15 ~~to calculate the next annual adjustment.~~

16 (6) ~~(7)~~ The local health department shall forward the license
17 applications to the department with appropriate recommendations.

18 Sec. 4103. (1) An applicant shall submit an application for a
19 food establishment license at least 30 calendar days before the
20 date planned for its opening or the change of ownership. For
21 temporary food establishments applying less than 4 days from
22 opening, the director may charge twice the applicable license fee
23 to perform the licensing evaluation.

24 (2) Application for the license under subsection (1) shall
25 **MUST** be submitted upon the forms approved by the department and
26 ~~shall~~ **MUST** contain the reasonable information required by the
27 department to process the application.

1 (3) An application for a mobile food establishment license
2 ~~shall~~**MUST** include all of the following information:

3 (a) The location and dates of the operation.

4 (b) The name and address of the commissary that will service
5 the applicant.

6 (4) Within 10 days after a change in the servicing commissary,
7 the mobile food establishment licensee shall submit an affidavit
8 containing the name and address of the new commissary servicing the
9 licensee.

10 (5) The local health department shall forward license
11 recommendations to the department. Section ~~3119(7)~~**3119(6)** does not
12 apply.

13 (6) The director may issue a temporary food establishment
14 license. The director, pursuant to uniformly applied department
15 guidance, may decline to issue multiple temporary food
16 establishment licenses for the same establishment within a given
17 calendar year.

18 Sec. 7112. (1) 21 CFR parts 1, 70, 73, 74, 81, 82, and 100 to
19 199, as set forth on the effective date of the amendatory act that
20 ~~added~~**AMENDED** this section, are adopted by reference, except to the
21 extent that provisions of this act and rules promulgated under this
22 act specify different requirements.

23 (2) The director, by promulgation of a rule, may adopt any
24 changes or updates to 21 CFR parts 1, 70, 73, 74, 81, 82, and 100
25 to 199.

26 Enacting section 1. This amendatory act does not take effect
27 unless House Bill No. 4812 of the 99th Legislature is enacted into

1 law.