

Act No. 92
Public Acts of 2018
Approved by the Governor
March 26, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Victory, Pagel, LaSata, Hoadley, VanSingel, Brann, Whiteford, VanderWall and Barrett

ENROLLED HOUSE BILL No. 4811

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, 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:

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 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.

(i) “License limitation” means an action by which the director imposes restrictions or conditions, or both, on a license of 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 must 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) “Micro market” means an operation that does all of the following:

(i) Offers for sale commercially prepackaged foods properly labeled for individual sale as required under section 3-201.11(C) of the food code, except as provided under section 3-302.11(B)(1), and does not offer bulk food for sale.

(ii) Uses an automated payment system.

(iii) Controls the entry to the operation so that the operation is accessible only by a defined population and is not accessible by the general public.

(iv) Limits consumer food preparation to heating or reheating food in a microwave oven.

(v) Utilizes continuous video surveillance of areas where consumers view, select, handle, and purchase food. An operation does not satisfy this subparagraph if the video surveillance is not of sufficient resolution to allow for the identification of situations that may compromise food safety or food defense.

(vi) If the operation uses a refrigerator unit or freezer unit, the operation only uses a unit that has both of the following features:

(A) Self-closing doors that allow food to be viewed without opening the door.

(B) An automatic self-locking mechanism that prevents the consumer from accessing the food if the refrigeration unit fails to maintain the internal product temperature specified under section 3-501.16(A)(2) of the food code or the freezer unit fails to maintain the food frozen.

(o) “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.

(p) “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 343(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.

(q) “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.

(r) “Mobile food establishment commissary” means an operation that is capable of servicing a mobile food establishment.

(s) “Nonperishable food” means food that is not perishable food.

(t) “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.

(u) “Person” means an individual, sole proprietorship, partnership, corporation, association, or other legal entity.

(v) “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.

(w) “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.

(x) “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}.

(y) “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.

(z) “Public health code” means 1978 PA 368, MCL 333.1101 to 333.25211.

Sec. 1111. As used in this act:

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

(b) “Regulatory authority” means the department, the local health department, or the authorized representative having jurisdiction over the food establishment.

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

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

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

(f) “Shellfish dealer” means an interstate wholesaler handling shellfish.

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

(i) Shellstock shipper.

(ii) Shucker packer.

(iii) Repacker or reshipper.

(h) “Smoked fish rules” means R 285.569.1 to R 285.569.19 of the Michigan Administrative Code.

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

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

(k) “Sulfiting agents” means any of the following:

(i) Sulfur dioxide.

(ii) Sodium sulfite.

(iii) Sodium bisulfite.

(iv) Potassium bisulfite.

(v) Sodium metabisulfite.

(vi) Potassium metabisulfite.

(l) “Temporary food establishment” means a food establishment that operates at a fixed location for a temporary period not to exceed 14 consecutive days.

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

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

(o) “Trimming” means removing leaves, roots, and other extraneous materials in preparation for grading, sorting, and sale as a whole fruit or vegetable. Trimming does not remove the peel or core and does not further cut the whole fruit or vegetable.

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

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

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

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

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

(s) "Vending machine location" means the room, enclosure, space, or area in which 1 or more vending machines are installed and operated, or a micro market.

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

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

Sec. 3119. (1) Until December 31, 2023, and except as otherwise provided for in subsection (2), upon submission of an application, an applicant for a food service establishment license shall pay to the local health department having jurisdiction the required fees authorized by section 2444 of the public health code, MCL 333.2444, and an additional state license fee as follows:

(a) Temporary food service establishment..... \$ 4.00.

(b) Food service establishment..... \$ 25.00.

(c) Mobile food establishment commissary \$ 25.00.

(d) Special transitory food unit \$ 39.00.

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

(3) The state license fee required under subsection (1) must be collected by the local health department at the time the license application is submitted. The state license fee is due and payable by the local health department to the state within 60 days after the fee is collected.

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

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

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

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

(2) Application for the license under subsection (1) must be submitted upon the forms approved by the department and must contain the reasonable information required by the department to process the application.

(3) An application for a mobile food establishment license must include all of the following information:

(a) The location and dates of the operation.

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

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

(5) The local health department shall forward license recommendations to the department. Section 3119(6) does not apply.

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

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor