

SENATE BILL No. 851

March 5, 2014, Introduced by Senators CASPERSON, COLBECK and PAPPAGEORGE and referred to the Committee on Regulatory Reform.

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), sections 1109 and 2129 as amended 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.

7 (b) "HACCP plan" means a written document that delineates the
8 formal procedures for following the hazard analysis and critical
9 control point principles developed by the national advisory

1 committee on microbiological criteria for foods.

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

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

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

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

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

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

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

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

12 (l) "LOW-RISK FOODS" INCLUDES, BUT IS NOT LIMITED TO, THE
13 FOLLOWING:

14 (i) COFFEE.

15 (ii) COTTON CANDY.

16 (iii) COMMERCIALLY PRECOOKED HOT DOGS, BRATWURST, AND
17 HAMBURGERS.

18 (iv) DOUGHNUTS.

19 (v) HAND-DIPPED ICE CREAM.

20 (vi) NACHOS WITH CHEESE.

21 (vii) POPCORN.

22 (viii) ROASTED NUTS.

23 (ix) SNOW CONES.

24 (x) OTHER FOODS DETERMINED BY THE LOCAL HEALTH DEPARTMENT TO
25 PRESENT A LOW RISK OF FOODBORNE ILLNESS.

26 (M) ~~(l)~~—"Michigan bridge card" means the card used for the
27 electronic benefit transfer system for food stamp distribution

1 required under section 14h of the social welfare act, 1939 PA 280,
2 MCL 400.14h.

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

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

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

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

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

1 immediately thereafter the name of the food imitated.

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

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

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

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

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

25 (A) A food for which a standard of quality has been prescribed
26 by this act or rules if its quality falls below the standard unless
27 its label bears, in ~~such~~ **THE** manner and form as ~~such~~ **THAT THE** rules

1 specify, a statement that it falls below ~~such~~**THE** standard.

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

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

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

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

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

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

1 federal act.

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

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

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

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

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

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

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

26 (W) ~~(v)~~—"Priority foundation item" means a provision in the
27 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) ~~(w)~~—"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) ~~(x)~~—"Public health code" means 1978 PA 368, MCL 333.1101 to 333.25211.

Sec. 2129. (1) All of the following food establishments shall employ a minimum of 1 managerial employee 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 ~~that is not any~~ **UNLESS 1 OR MORE** of the following **APPLY TO THE FOOD SERVICE ESTABLISHMENT:**

(i) ~~Operating~~ **IT OPERATES** under a temporary food service

1 establishment license.

2 (ii) ~~A~~ **IT IS A** vending machine location.

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

4 (b) An extended retail food establishment.

5 (c) ~~Operated~~ **A FOOD SERVICE ESTABLISHMENT OPERATED** within a
6 retail grocery.

7 (2) An individual certified ~~under~~ **AS DESCRIBED IN** subsection
8 (1) shall be recognized with full faith and credit by ~~the~~ **THIS**
9 state and all local units of government throughout ~~the~~ **THIS** state.

10 (3) The department may promulgate rules to do all of the
11 following:

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

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

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

22 (d) Implement and enforce the requirements described in
23 subdivision (a).

24 (4) The certification program developed by the American
25 national standards institute, as it exists on April 1, 2008, is
26 incorporated by reference. The department may adopt updates to the
27 certification program accreditation standards in subsection (1) by

1 rule.

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

6 Sec. 3115. (1) A local health department shall promptly review
7 a license application for a food service establishment, ~~or~~
8 **INCLUDING, BUT NOT LIMITED TO, A** vending machine location, to
9 determine if the application is complete and accurate. A local
10 health department may return an incomplete or inaccurate
11 application to a license applicant and request any additional
12 information it considers necessary to assure completeness or
13 accuracy of the application.

14 (2) ~~After~~ **SUBJECT TO SUBSECTION (3), AFTER** a local health
15 department determines that an application is proper, complete, and
16 accurate, it shall inspect the proposed or existing food service
17 establishment, ~~or~~ **INCLUDING, BUT NOT LIMITED TO, A** vending machine
18 location, to determine compliance with this act. The inspection
19 shall be conducted by the local health department before it makes a
20 recommendation to the department on the issuance of a license.

21 (3) **IF A TEMPORARY FOOD ESTABLISHMENT WILL SERVE ONLY LOW-RISK**
22 **FOODS, THE LOCAL HEALTH DEPARTMENT, BASED UPON A PUBLIC HEALTH RISK**
23 **ASSESSMENT, MAY CONDUCT AN IN-OFFICE CONSULTATION, INCLUDING FOOD**
24 **SAFETY EDUCATION, AND OPERATIONAL REVIEW OF THE PROPOSED TEMPORARY**
25 **FOOD ESTABLISHMENT WITH THE LICENSE APPLICANT AND WAIVE THE**
26 **INSPECTION UNDER SUBSECTION (2).**

27 (4) ~~(3)~~ A local health department shall forward **TO THE**

- 1 **DEPARTMENT** its recommendation for **LICENSE** approval ~~of the license~~
- 2 or approval with limitation. ~~of the license to the department.~~