

Act No. 188  
Public Acts of 2016  
Approved by the Governor  
June 20, 2016  
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June 21, 2016  
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**STATE OF MICHIGAN  
98TH LEGISLATURE  
REGULAR SESSION OF 2016**

**Introduced by Senators Hune, Robertson, Smith, Brandenburg, Knezek, Knollenberg, Schmidt, Emmons, Shirkey, Hildenbrand, Proos, O'Brien, Johnson, MacGregor, Jones, Schuitmaker and Hansen**

# **ENROLLED SENATE BILL No. 774**

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 1107, 1111, 2129, 3113, 3115, 3119, 4105, and 4111 (MCL 289.1107, 289.1111, 289.2129, 289.3113, 289.3115, 289.3119, 289.4105, and 289.4111), sections 1107, 1111, and 4105 as amended by 2012 PA 178, sections 2129 and 3115 as amended by 2015 PA 142, section 3119 as amended by 2008 PA 375, and section 4111 as amended by 2015 PA 61.

*The People of the State of Michigan enact:*

Sec. 1107. As used in this act:

- (a) "Department" means the department of agriculture and rural development.
- (b) "Director" means the director of the department or his or her designee.
- (c) "Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include either of the following:
  - (i) A group or communal residential setting within any type of structure.
  - (ii) An outbuilding, shed, barn, or other similar structure.
- (d) "Egg" does not include a balut, which is an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.
- (e) "Evaluation" means a food safety audit, inspection, or food safety and sanitation assessment, whether announced or unannounced, that identifies violations or verifies compliance with this act and determines the degree of active control by food establishment operators over foodborne illness risk factors.
- (f) "Extended retail food establishment" means a retail grocery that does both of the following:
  - (i) Serves or provides an unpackaged food for immediate consumption.
  - (ii) Provides customer seating in the food service area.

(g) “Fair” means a fair or exhibition operated and managed under 1929 PA 11, MCL 46.151 to 46.153, or held by an agricultural or horticultural society under 1855 PA 80, MCL 453.231 to 453.240.

(h) “Fair concession” means a food concession, storage, preparation, or dispensing operation at a state or county fair.

(i) “Farmers’ market” means a public and recurring assembly of farmers or their representatives selling directly to consumers food and products that the farmers have produced themselves. In addition, the market may include a variety of other vendors as determined by market management.

(j) “Federal act” means the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 USC 301 to 399d, as in effect on October 1, 2012.

(k) “Festival” means an event, staged by a local community or local organization, that centers on and celebrates a certain aspect of that community or organization. Festival includes, but is not limited to, a fair, art show, chili cook-off, car show, hot air balloon festival, religious festival, drama festival, or cultural festival.

(l) “First receiver” means a person who receives eggs from a producer at any place of business and candles, grades, sorts, packs, or packages the eggs.

(m) “Food” means articles used for food or drink for humans or other animals, chewing gum, and articles used for components of any such article.

(n) “Food additive” means any substance, the intended use of which, directly or indirectly, results in or may be reasonably expected to result in its becoming a component or otherwise affecting the characteristics of any food if that substance is not generally recognized among experts as having been adequately shown through scientific procedures to be safe under the conditions of its intended use. Food additive includes any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and includes any source of radiation intended for any use. Food additive does not include any of the following:

(i) A pesticide chemical in or on a raw agricultural commodity.

(ii) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.

(iii) A color additive.

(iv) Any substance used in accordance with a sanction or approval granted before the enactment of the food additives amendment of 1958, Public Law 85-929, pursuant to the federal act, the poultry products inspection act, 21 USC 451 to 472, or the federal meat inspection act, 21 USC 601 to 683.

(o) “Food code” means “Food Code, 2009 Recommendations of the United States Public Health Service Food and Drug Administration”, which regulates the design, construction, management, and operation of certain food establishments.

(p) “Food establishment” means an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, vended, sold, or offered for sale. Food establishment includes, but is not limited to, a food processor, a food warehouse, a food service establishment, a vending machine location, and a retail grocery. Food establishment does not include any of the following:

(i) A charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event.

(ii) An inpatient food operation located in a health facility or agency subject to licensure under article 17 of the public health code, MCL 333.20101 to 333.22260.

(iii) A food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.

(q) “Food processor” means a food establishment that processes, manufactures, wholesales, packages, labels, or stores food. Food processor does not include a maple syrup producer. Processing is an act, such as canning, freezing, dehydrating, drying, distilling, extracting, preserving, grinding, crushing, milling, washing, trimming, packing, or otherwise preserving or changing the form of a food.

(r) “Food safety and sanitation assessment” means judging or assessing specific food handling activities, events, conditions, or management systems to determine their potential effectiveness in controlling risks for foodborne illness and their compliance with this act, accompanied by a report of findings.

(s) “Food safety audit” means the methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices for compliance with this act, accompanied by a report of findings. Food safety audit includes checking or testing, or both, of observable practices and procedures to determine compliance with standards contained in or adopted by this act, accompanied by a report of findings.

(t) “Food service establishment” means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater,

commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include any of the following:

- (i) A motel that serves continental breakfasts only.
- (ii) A bed and breakfast that has 10 or fewer sleeping rooms for rent.
- (iii) A bed and breakfast that has more than 10 sleeping rooms for rent, if the bed and breakfast serves continental breakfasts only.
- (iv) A child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the director to be a food service establishment.
- (v) A vending machine location. However, if a food service establishment operates a vending machine location on the same premises, the vending machine location is considered part of the food service establishment.
- (u) "Food warehouse" means a food establishment that stores or distributes food for wholesale.

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 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.

(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. 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 it is a licensed temporary food service establishment.

(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 as provided in 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. 3113. A county, city, village, or township shall not regulate those aspects of food service establishments that are subject to regulation under this act except to the extent necessary to carry out the responsibility of a local health department to implement licensing provisions of chapter IV. This chapter does not relieve the applicant for a license or a licensee from responsibility for securing a local permit or complying with applicable local codes, regulations, or ordinances not in conflict with this act.

Sec. 3115. (1) A local health department shall promptly review a license application for a food service establishment 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 ensure 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 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.

Sec. 3119. (1) 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..... | \$ 3.00.  |
| (b) Food service establishment.....           | \$ 22.00. |
| (c) Mobile food establishment commissary..... | \$ 22.00. |
| (d) Special transitory food unit.....         | \$ 35.00. |

(2) When licensing a special transitory food unit, a local health department shall impose a fee of \$135.00, 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) shall 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 department shall adjust on an annual basis the fees prescribed by subsections (1) and (2) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index but not to exceed 5%. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the Bureau of Labor Statistics of the United States Department of Labor or its successor. The adjustment shall be rounded to the nearest dollar to set each year's fee under this subsection, but the absolute value shall be carried over and used to calculate the next annual adjustment.

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

Sec. 4105. (1) A person, establishment, or organization that is 1 or more of the following is exempt from the licensure requirements under this act:

(a) Subject to subsection (2), an establishment licensed under 1 of the following acts while conducting activities within the scope of that act:

- (i) Grain dealers act, 1939 PA 141, MCL 285.61 to 285.89.
  - (ii) 1959 PA 228, MCL 286.371 to 286.379.
  - (iii) 1964 PA 158, MCL 290.451 to 290.466.
  - (iv) Grade A milk law of 2001, 2001 PA 266, MCL 288.471 to 288.540.
  - (v) Manufacturing milk law of 2001, 2001 PA 267, MCL 288.561 to 288.740.
- (b) A person that is offering only whole uncut fresh fruits and vegetables directly to consumers.



(c) Consumers or nonprofit cooperatives of consumers in compliance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, providing products from regulated sources only for their own use.

(d) Nonprofit cooperatives in compliance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, that are growers selling unprocessed products of their own production or are producers selling unprocessed products of their own production from regulated sources.

(e) Retail outlets for the sale of prepackaged honey or maple syrup produced in this state if the outlet is operated by the producer and the processing facility is licensed under this act. Both retail outlets and processing facilities are exempt from licensure under this act for producers with gross sales of \$15,001.00 or less of honey or maple syrup. In such case, the honey and maple syrup shall have labeling substantially similar to that for cottage food products as described in section 4102(3).

(f) A temporary food establishment with no food preparation using only single-service articles and serving only non-potentially-hazardous food or beverage.

(g) A retail food establishment that does both of the following:

(i) Only sells prepackaged, non-potentially-hazardous foods.

(ii) Offers only an incidental amount of food, such as the sale of single-service packages.

(h) A mobile food establishment, such as an ice cream truck, that offers only prepackaged, single-serving frozen desserts.

(i) An event not open to the general public held by a nonprofit trade association representing food establishments, suppliers, or manufacturers where limited food preparation takes place for the purpose of advertising, displaying, promoting, and sampling prepared food.

(j) A commercial fishing guide service that serves lunch to a party of not more than 12 clients on or adjacent to a body of water, river, or stream while pursuing, catching, killing, taking, or attempting to take fish. As used in this subparagraph, "commercial fishing guide service" means a service provided for a fee or other valuable consideration, regardless of whether the fee or other valuable consideration is paid directly or indirectly, to assist another person in pursuing, catching, killing, taking, or attempting to take fish.

(k) A person owning or operating a device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk gum, nuts, and panned candies.

(l) Feeding operations set up in response to an emergency or disaster.

(m) A person operating as a food warehouse or food processor, if the food warehouse or food processor contains or handles only uncut fruits or vegetables, or both, and meets all of the following criteria:

(i) The establishment is owned and operated by the person producing the fruits or vegetables, or both.

(ii) Activities at the establishment are limited to storing, grading, sorting, packing, washing, trimming, and refrigerating.

(iii) The fruits or vegetables, or both, are primarily from the person's own production, and the balance are products of the same genus or genera from other agricultural producers.

(iv) The food is not "potentially hazardous food (time/temperature control for safety food)" as defined in the food code.

(2) Notwithstanding subsection (1)(a), a person operating as or conducting activities the director considers to be a food establishment must be licensed in the appropriate category under this act.

(3) If food is prepared in a food service establishment licensed under this chapter and the food is transported from the food service establishment to a fixed temporary serving location, the serving location is not required to be separately licensed and is considered an extension of the food service establishment if no food preparation is conducted at the serving location and the food is transported and served by employees of the food service establishment.

(4) If prepackaged food is transported from a food establishment licensed under this chapter to a sales location at a farmers' market, fair, or festival, the sales location is not required to be separately licensed and is considered an extension of the food establishment if the food is transported and sold by employees of the food establishment.

(5) If prepackaged food is transported from a food establishment licensed under this chapter to 1 or more vending machine locations by employees of the food establishment and the vending machine or machines are maintained by employees of the food establishment, the vending machine locations are not required to be separately licensed and are considered to be an extension of the food establishment, which shall be separately licensed. However, if the food establishment from which the prepackaged food is transported is located in another state, both of the following apply:

(a) One of the vending machine locations in this state shall be separately licensed as a food establishment.

(b) The remaining vending machine locations in this state are not required to be separately licensed and are considered to be an extension of the food establishment under subdivision (a).

Sec. 4111. (1) The department shall impose the following license fees for each year or portion of a year:

(a) Retail grocery: \$106.00 for 2016, \$145.00 for 2017, and \$183.00 for any subsequent year.

(b) Extended retail food establishment: \$271.00 for 2016, \$370.00 for 2017, and \$468.00 for any subsequent year.

(c) Food processor: \$271.00 for 2016, \$370.00 for 2017, and \$468.00 for any subsequent year.

(d) Limited food processor: \$106.00 for 2016, \$145.00 for 2017, and \$183.00 for any subsequent year.

(e) Mobile food establishment: \$183.00 for 2016, \$186.00 for 2017, and \$189.00 for any subsequent year.

(f) Temporary food establishment: \$40.00 for 2016, \$55.00 for 2017, and \$70.00 for any subsequent year.

(g) Special transitory food unit: \$150.00 for 2016, \$153.00 for 2017, and \$156.00 for any subsequent year.

(h) Mobile food establishment commissary: \$183.00 for 2016, \$186.00 for 2017, and \$189.00 for any subsequent year.

(i) Food warehouse or vending company base location: \$106.00 for 2016, \$145.00 for 2017, and \$183.00 for any subsequent year. In addition, the operator of the vending company base location shall pay an additional fee based on the number of vending machine locations in this state, as follows:

(i) 1 to 20 locations, \$500.00.

(ii) 21 to 50 locations, \$750.00.

(iii) 51 to 75 locations, \$2,000.00.

(iv) More than 75 locations, \$3,000.00.

If a person operates more than 1 vending company base location in this state, all vending machine locations served by those vending company base locations shall be aggregated on 1 of the vending company base location licenses for the purpose of determining the amount of the additional fee for vending machine locations.

(j) Food service establishment: the amounts described in subsection (2).

(2) If a local health department no longer conducts a food service program, the department, in consultation with the commission of agriculture and rural development, shall set the food sanitation fees to be imposed for the conduct of the food service program by the department. The fees imposed must equal, as nearly as possible, 1/2 of the department's cost of providing the service. The department may impose the service fees for up to 12 months after the date of cessation by the local health department. After the 12-month period, the department shall collect the fees only as authorized pursuant to an appropriation.

(3) Any license fee paid on an initial application is nonrefundable.

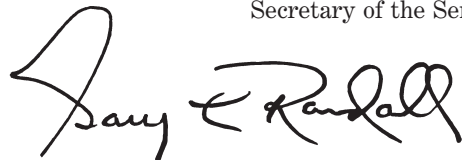
(4) The department may charge a convenience fee and collect from the applicant any additional costs associated with the method of fee payment for the license or permit fees described in this chapter, not to exceed the costs to the department.

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 .....

.....  
Governor