

Act No. 487
Public Acts of 2002
Approved by the Governor
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Rep. Ruth Johnson

ENROLLED HOUSE BILL No. 5928

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; 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 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, 1119, 3119, 4111, 4117, 6101, 6149, and 7101 (MCL 289.1109, 289.1119, 289.3119, 289.4111, 289.4117, 289.6101, 289.6149, and 289.7101); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1109. As used in this act:

(a) "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.

(b) "Label" means a display of written, printed, or graphic matter upon 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.

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

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

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

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

(g) "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.

(h) “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 as are permitted and exemptions as to small packages as are established by rules prescribed by the department.

(vi) Any word, statement, or other labeling required by this act is not prominently placed on the label or labeling 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 rules as provided by this act or under the federal act, unless it conforms to such 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 rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such 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 and its quality falls below such standard unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard.

(B) A food for which a standard or standards of fill of container have been prescribed by this act or rules and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as 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 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 and 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 U.S.C. 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 packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

(i) “Mobile food establishment” means a food establishment operating from a vehicle or watercraft that returns to a licensed commissary for servicing and maintenance at least once every 24 hours.

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

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

(l) “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, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i, 136j to 136r, and 136s to 136y, and is used in the production, storage, or transportation of raw agricultural commodities.

(m) “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.

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

Sec. 1119. (1) Except as rescinded, rules promulgated under public acts repealed by this act retain authorization under this act.

(2) Notwithstanding R 285.553.1 of the Michigan administrative code, the following terms have the following meanings for purposes of those rules:

(a) “Act” means the food law of 2000, 2000 PA 92, MCL 289.1101 to 289.8111.

(b) “Establishment” means any farm crop storage where food is handled, stored, or prepared and that is exempt from the requirements of section 7101.

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) Vending machine location fee \$ 2.50.
- (b) Temporary food service establishment \$ 2.50.
- (c) Food service establishment \$ 19.00.
- (d) Mobile food establishment commissary..... \$ 19.00.
- (e) Special transitory food unit \$ 30.00.

(2) When licensing a special transitory food unit, a local health department shall impose a fee of \$117.00, 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 school or other educational institution is exempt from paying the fees imposed under section 2444 of the public health code, MCL 333.2444, and the additional state license fee imposed under subsections (1) and (2) but is not exempt from the other provisions of this chapter.

(5) 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 of 1986 is exempt from paying additional state license fees imposed under this section except for the vending machine location license fee. An organization seeking an exemption under this subsection shall furnish to the department or a local health department evidence of its tax-exempt status.

(6) 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.

(7) The department shall adjust on an annual basis the fees prescribed by subsections (1) and (2), as adjusted after November 8, 2000, 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.

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

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

- (a) Retail food establishment: \$67.00.
- (b) Extended retail food establishment: \$172.00.
- (c) Wholesale food processor: \$172.00.
- (d) Limited wholesale food processor: \$67.00.
- (e) Mobile food establishment: \$172.00.
- (f) Temporary food establishment: \$25.00.
- (g) Special transitory food unit: \$117.00.
- (h) Mobile food establishment commissary: \$172.00.
- (i) Food warehouse: \$67.00.
- (j) Food service establishment: the amounts described in subsection (2).

(2) If a local health department no longer conducts a food service sanitation program, the department, in consultation with the commission of agriculture, shall set the food sanitation fees to be imposed for the department's services performed under subsection (1)(j). The fees imposed shall equal, as nearly as possible, 1/2 of the department's cost of providing the service. The conduct of the services resulting from a cessation of a food service sanitation program is considered an imminent or substantial hazard that allows the department to 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 in the amount provided by amendment of this act or as authorized pursuant to appropriation.

Sec. 4117. (1) Except as provided in subsections (2) and (3), money collected under this chapter by the department shall be credited to the general fund of the state.

(2) A consumer food safety education fund is created as a revolving fund in the department of treasury. The consumer food safety education fund shall be administered by the department and funded by adding \$3.00 to the fee for each food establishment license in all categories except vending machines and in cases of fee-exempt food

establishments. The money in the fund shall be used to provide statewide training and education to consumers on food safety. An advisory committee consisting of at least 9 people representing consumers, industry, government, and academia shall advise the department on the use of the funds. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(3) An industry food-safety education fund is created as a revolving fund in the department of treasury. The industry food-safety education fund shall be administered by the department and funded by adding \$2.00 to the fee for each food service establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the fund shall be used to provide food safety training and education to food service establishment employees and agents of the director who enforce this act. The advisory committee created in subsection (2) shall advise the department on the use of the funds. Money remaining in the fund at the end of the fiscal year shall be carried forward into the next fiscal year.

(4) As used in this section, “fee-exempt food establishment” means a food establishment exempt from all state and local food establishment license fees under either of the following circumstances:

(a) The education institution exemption under section 3119(4).

(b) A nonprofit organization that has an exemption under section 3119(5) combined with an exemption from the local health department sanitation service fee under section 2444 of the public health code, MCL 333.2444.

Sec. 6101. (1) Chapters 1 through 8 of the food code are incorporated by reference except as amended and modified as follows:

(a) Section 3-401.11(B) is modified so that the oven temperature for high humidity oven temperature reads “54°C (130°F) or higher”.

(b) Where provisions of this act and rules promulgated under this act specify different requirements.

(c) Section 3-201.11(D) is modified so that “subparagraph 3-401.11(C)(1)” reads “subparagraph 3-401.11(D)(1)”.

(d) Section 6-101.11 is modified to add after subparagraph (A)(3): “(B) In a temporary food establishment:”.

(2) The director, by promulgation of a rule, may adopt any changes or updates to the food code.

(3) The annexes of the food code are considered persuasive authority for interpretation of the food code.

Sec. 6149. (1) As used in this section:

(a) “Disclosure” means a written identification as to which items are, or can be, ordered raw or undercooked in their entirety, or items that contain an ingredient that is raw or undercooked.

(b) “Publicly available” means accessible to consumers, without their having to request it, before their placing their food orders or making their selections.

(c) “Reminder” means a written notice concerning the significant health risk of consuming raw or undercooked animal foods.

(d) “Selection information” means whatever consumers read to make their order selections, such as menu, table tent, placard, chalkboard, or other written means.

(2) To satisfy section 3-603.11 of the food code, the food establishment must meet the prescriptions of this section.

(3) The food establishment shall make a disclosure in the selection information that an item contains raw or undercooked food of animal origin by either or both of the following methods:

(a) Items are described to include the disclosure, such as “oysters on the half shell (raw oysters)”, “raw-egg caesar salad”, “eggs (may be requested undercooked)”, and “hamburgers (can be cooked to order)”. The disclosure is not limited to those items and descriptions in this subdivision but includes items and descriptions of a similar nature.

(b) Items are asterisked with a footnote that states the items are served raw or undercooked, contain, or may contain raw or undercooked ingredients.

(4) A reminder of the significantly increased risk associated with eating foods subject to the disclosure in raw or undercooked form is satisfied by 1 of the following methods:

(a) Items requiring disclosure are asterisked on the selection information to a footnote that states 1 of the following disclosures:

(i) “Regarding the safety of these items, written information is available on request.”.

(ii) “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness.”.

(iii) “Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.”.

(b) Either of the reminders listed under subdivision (a)(ii) or (iii) is used and appears at least once in the selection information on the first interior page or the page where the first item requiring disclosure appears. When the option described in this subdivision is used, the word “NOTICE” shall appear before the reminder statement.

(c) A publicly available placard supplies the reminder of the significantly increased risk and meets the following requirements:

- (i) It is titled "NOTICE" and contains 1 of the reminders listed in subdivision (a)(ii) or (iii).
- (ii) It is posted near the customer entrances of the establishment and is clearly visible to the customers.
- (iii) All letters in the title are capitalized in bold, arial font not less than 44-point font size and, if menu items are on the placard, then all letters are equally readable as the menu items on the placard.
- (iv) All letters in the reminder are arial font not less than 36-point font size.
- (v) The reminder is placed at approximately eye level and is easily readable from the point at which consumers would normally stand to read it.
- (vi) The reminder maintains visibility in layout, format, and graphics in contrast to other posted materials.

(d) The United States food and drug administration model consumer advisory brochure or equivalent as determined by the director is publicly available.

(5) A reminder may be tailored to be product specific if a food establishment either has a limited menu or offers only specific animal-derived foods in raw or undercooked, ready-to-eat form.

(6) The language for the menu items shall match the language used for the disclosure and the reminder. The disclosure and reminder may also be in additional languages.

(7) The text for disclosures and reminders shall meet the following requirements:

(a) The text size for statements on handheld menus or table tents shall be visually equivalent to at least 11-point font size or may be visually equivalent to the font size of menu item descriptions.

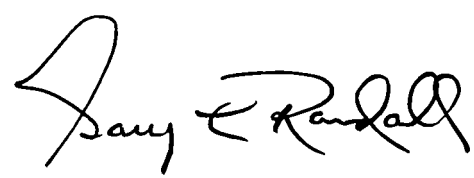
(b) Text color provides a clear contrast to background.

(8) Table tents, placards, or chalkboards that are used exclusively to list food items that are offered as daily, weekly, or temporary specials are exempt from the requirements of this section when those food items also appear in the primary selection information that contains the disclosures and reminders meeting the requirements of this section.

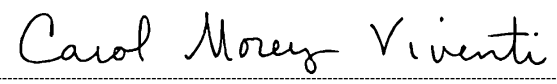
Sec. 7101. Subject to section 1119(2), a food processing plant shall comply with the regulations of the food and drug administration in 21 C.F.R. part 110, except that refrigerated potentially hazardous food shall be stored at 4.4 degrees centigrade (40 degrees Fahrenheit) or below.

Enacting section 1. Sections 6119, 6121, 6123, and 6145 of the food law of 2000, 2000 PA 92, MCL 289.6119, 289.6121, 289.6123, and 289.6145, are repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.