3/19/19 9:01 A.M.

Chapter No. 338
19/HR43/R1912PH
nn / AM

HOUSE BILL NO. 1206

Originated in House _____ Clerk

HOUSE BILL NO. 1206

AN ACT TO AMEND SECTION 69-1-18, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "VENDING MACHINE" AND "MICRO MARKET"; TO EXEMPT VENDING MACHINES AND MICRO MARKETS WHICH SALE PREPACKAGED FOOD AND OTHER FOOD PRODUCTS FROM THE REGULATORY AUTHORITY OF THE MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE; TO AMEND SECTION 75-29-19, MISSISSIPPI CODE OF 1972, TO EXEMPT VENDING MACHINES AND MICRO MARKETS WHICH SALE PREPACKAGED FOOD AND OTHER FOOD PRODUCTS FROM THE REGULATORY AUTHORITY OF THE STATE BOARD OF HEALTH; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 69-1-18, Mississippi Code of 1972, is amended as follows:

69-1-18. (1) The following words and phrases shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting: the growth of infectious or toxigenic microorganisms; the growth and toxin production of Clostridium botulinum; or in raw shell eggs, the growth of salmonella enteritis. "Potentially hazardous food" includes an

animal food (of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; and cut melons.

(b) "Micro market" means an unattended, self-checkout retail establishment that utilizes an automated payment system; is located in the interior of a building that is generally not accessible by the general public, with limited access and use to a defined population; and

(i) Offers for sale only commercially, tamper-evident packaged food and beverages properly labeled for individual retail sale and acquired from a source approved by the United States Food and Drug Administration or an appropriate state government agency; whole, uncut, raw fruits and vegetables; such other food and beverages as may be authorized in the Food Code, as adopted by the Department of Agriculture and Commerce; and any other food and beverages not otherwise subject to any required on-site inspection;

(ii) Has no on-site food preparation except for the heating or reheating of food in a microwave oven;

(iii) May utilize beverage dispensers which provide individual servings; and

(iv) May utilize refrigeration and freezer units.

(c) "Vending Machine" means a self-service machine that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses servings of food

in bulk or in packages, or prepared by the machine, without the necessity of replenishing the machine between each vending operation.

(* * *d) "Retail food establishment" means any establishment where food and food products are offered for sale to the ultimate consumer and intended for off-premise consumption. Such food or food products may be exposed to varying degrees of preparation and may often need further preparation or processing after it has been purchased. A retail food establishment does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) A food processing plant; * * *

(iv) A food establishment as defined by the Mississippi State Department of Health * * *;

(v) A micro market; and

(vi) A vending machine.

(2) The commissioner and his agents shall have the authority:

(a) To promulgate rules and regulations establishing certain sanitation requirements for retail food establishments;

(b) To conduct sanitation inspections in retail food establishments; and

(c) To publish the names and addresses of violators and such information pertaining to violation(s) of this section as he deems appropriate.

(3) Each retail food establishment, before engaging in business, shall obtain a license from the commissioner. Owners of more than one (1) retail food establishment must obtain a license for each establishment. A license fee of Ten Dollars ($10.00) must be paid to the department before a license will be issued. Application for such license shall be made on forms prescribed and furnished by the commissioner. Licenses issued under this subsection by the commissioner shall expire on June 30 each year and application for renewals thereof shall be made annually before the expiration date. Licenses shall not be transferable and application must be made for a new license if there is any change in location or ownership of the business.

(4) Any person who violates any provision of this law or the regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

(5) The commissioner may impose administrative penalties for violation of this section.

(6) Any person found by the commissioner to be in violation of this section may be assessed a penalty in an amount of not more

than Five Hundred Dollars ($500.00) and subsequent violations within a six-month period at a penalty of not more than One Thousand Dollars ($1,000.00). In addition to, or in lieu of, such penalties the commissioner may suspend or revoke the permit issued to such person under terms of this section.

(7) When any violation of this section or the rules and regulations promulgated hereunder occurs, or is about to occur, that presents a clear and present danger to the public health, safety or welfare requiring immediate action, the commissioner or any of the department's field inspectors, or any other persons authorized by the commissioner, may issue an order to be effective immediately before notice and a hearing, that imposes any or all of the following penalties against the accused: (a) a stop sale order on any product in violation of this section; (b) an order to seize any product that is not in compliance with this section and require it to be denatured or destroyed under the supervision of the department's inspectors; or (c) an order that the retail food establishment or any department within such establishment cease operations until it is in compliance with this section. The order shall be served upon the accused in accordance with Rule 4 of the Mississippi Rules of Civil Procedure or certified mail or it may be served by giving a copy of the order to the manager of the retail food establishment or, where no manager is present, an employee of the establishment. The accused shall then have twenty (20) days after service of the order upon him within which to

request an informal administrative review before the Director of the Bureau of Regulatory Services in the department, or the director's designee, who shall act as reviewing officer. If the accused makes such a request within such time, the reviewing officer shall provide an informal administrative review to the accused within ten (10) days after such request is made. If the accused does not request an informal administrative review within twenty (20) days, then he shall have waived his right to such review. At the informal administrative review, there shall be no court reporter or record made of the proceedings. Each party may present its case in the form of documents, oral statements or any other method. The rules of evidence shall not apply. The reviewing officer's decisions shall be in writing, and it shall be delivered by certified mail. If the accused is aggrieved by the order of the hearing officer, he may appeal to the commissioner for a full evidentiary hearing. Such appeal shall be perfected by filing a notice of appeal with the commissioner within thirty (30) days after the order of the reviewing officer is served on the appealing party. The hearing before the commissioner or his designee shall be held within a reasonable time after the appeal has been perfected. Failure to perfect an appeal within the allotted time shall be deemed a waiver of such right.

SECTION 2. Section 75-29-19, Mississippi Code of 1972, is amended as follows:

75-29-19. The State Board of Health is hereby charged with the enforcement of this chapter. The State Board of Health shall have the authority to establish such rules and regulations not inconsistent with this chapter as will best carry its provisions into effect, unless regulation of food as defined in this chapter is otherwise authorized by law. However, the regulatory authority provided to the board under this section shall not apply to the regulation of a vending machine or micro market as defined in Section 69-1-18, or to the food and beverages sold therefrom.

SECTION 3. This act shall take effect and be in force from and after July 1, 2019.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 11, 2019

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 7, 2019

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

March 19, 2019 9:01 Am