

Act No. 102  
Public Acts of 1995  
Approved by the Governor  
June 22, 1995  
Filed with the Secretary of State  
June 23, 1995

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Reps. Bobier and Jamian

# **ENROLLED HOUSE BILL No. 4571**

AN ACT to amend section 12901 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," as amended by Act No. 107 of the Public Acts of 1992, being section 333.12901 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 12901 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 107 of the Public Acts of 1992, being section 333.12901 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 12901. (1) As used in this part:

(a) "Bed and breakfast" means a private residence that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms to transient tenants, serves breakfasts at no extra cost to its transient tenants, has a smoke detector in proper working order in every sleeping room, and a fire extinguisher in proper working order on every floor.

(b) "Continental breakfast" means the serving of only nonpotentially hazardous food, such as a roll, pastry or doughnut, fruit juice, hot beverage, or individual portions of milk, and items incidental to these foods.

(c) "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, 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) An inpatient food service operation located in a health facility or agency subject to licensure under article 17.

(ii) Unless the establishment is carrying out operations beyond the scope of its license, an establishment licensed and inspected under any of the following acts:

<u>Year of Act</u>	<u>Public Act No.</u>	<u>Compiled Law Numbers</u>
1913	222	288.101 to 288.117
1963	244	289.321 to 289.336
1965	233	288.21 to 288.29a
1965	280	287.571 to 287.582
1968	298	288.321 to 288.334
1978	328	289.801 to 289.810

(iii) A motel that serves continental breakfasts only.

(iv) A food concession at a state or county fair.

(v) 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.

(vi) A food establishment that is licensed and inspected under the food processing act of 1977, Act No. 328 of the Public Acts of 1978, being sections 289.801 to 289.810 of the Michigan Compiled Laws, even if the food establishment sells for consumption off the premises, in a volume incidental to the total volume of the food establishment, any of the following:

(A) Prepackaged food that is offered for sale in individual portions that do not require preparation in the food establishment except for temperature modification. As used in this subparagraph, "prepackaged food" means food that is prepared and packaged either at a facility inspected and approved by the United States department of agriculture or a facility that is licensed as a food processor under Act No. 328 of the Public Acts of 1978.

(B) Food that is prepared at the food establishment, displayed in bulk form for sale, and sold in quantities other than individual portions.

(C) Beverages, including, but not limited to, hot chocolate, coffee, tea, slush, and soda pop.

(D) Hand dipped ice cream.

(E) Rotisserie prepared hot dogs.

(F) Other foods as determined by the director or his or her designee, in conjunction with the director of the department of agriculture or his or her designee.

(vii) A bakery that is licensed and inspected under Act No. 328 of the Public Acts of 1978, even if the bakery sells hot or cold beverages or temperature modified bakery products in a volume incidental to the total volume of business of the bakery.

(viii) An establishment otherwise within the scope of this act that is licensed and inspected by the department of agriculture if the manner of licensing and inspection is mutually agreed upon by the director and the director of the department of agriculture or their designated representatives.

(ix) A bed and breakfast that has 8 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants.

(x) A bed and breakfast that has at least 9 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.

(xi) A temporary food service establishment using only single service articles and serving only food or beverages that do not come within the definition of potentially hazardous food or beverage. As used in this subparagraph, "potentially hazardous food or beverage" means any food that consists, in whole or in part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods that have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less.

(xii) 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, capturing, 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 consideration of value, regardless of whether the fee or consideration is paid directly or indirectly, to assist another person in pursuing, capturing, catching, killing, taking, or attempting to take fish.

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

(e) "Person" means a person as defined in section 1106 or a governmental entity.

(f) "Temporary food service establishment" means a food service establishment that operates at a fixed location for a temporary period of time not to exceed 2 weeks.

(g) "Transitory food unit" means a food service establishment that operates from and is regularly transported by a motor vehicle, and that does not regularly return to a fixed food service establishment licensed by the department for servicing and maintenance.

(h) "Vending machine" means a self-service device offered for public use that, upon insertion of a coin, token, card, key, or paper currency, dispenses unit servings of food or beverages without the necessity of replenishing the device between each vending operation. Vending machine does not include:

(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 located inside a food establishment that is licensed under Act No. 328 of the Public Acts of 1978.

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

(2) In addition, article 1 contains general definitions and principles of construction that apply to all articles in this code.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.