

# HOUSE BILL No. 4568

April 5, 2007, Introduced by Reps. Brown, Ball, Kathleen Law, Hammon, Espinoza, Hune, Stahl, Nofs, Valentine, Meadows, Gonzales, Leland, Rick Jones, Polidori, Young, Sheltroun, Accavitti, Pavlov, Clemente, Hammel, Gillard, Lahti, Nitz, Lindberg and Miller and referred to the Committee on Agriculture.

A bill to amend 2000 PA 92, entitled "Food law of 2000," by amending sections 1105 and 1109 (MCL 289.1105 and 289.1109), section 1109 as amended by 2002 PA 487, and by adding section 4102.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1105. As used in this act:

2       (a) "Adulterated" means food to which any of the following  
3 apply:

4       (i) It bears or contains any poisonous or deleterious substance  
5 that may render it injurious to health except that, if the  
6 substance is not an added substance, the food is not considered  
7 adulterated if the quantity of that substance in the food does not  
8 ordinarily render it injurious to health.

9       (ii) It bears or contains any added poisonous or added

1 deleterious substance, other than a substance that is a pesticide  
2 chemical in or on a raw agricultural commodity; a food additive; or  
3 a color additive considered unsafe within the meaning of  
4 subparagraph (v).

5 (iii) It is a raw agricultural commodity that bears or contains  
6 a pesticide chemical considered unsafe within the meaning of  
7 subparagraph (v).

8 (iv) It bears or contains any food additive considered unsafe  
9 within the meaning of subparagraph (v) provided that where a  
10 pesticide chemical has been used in or on a raw agricultural  
11 commodity in conformity with an exemption granted or tolerance  
12 prescribed under subparagraph (v) and the raw agricultural commodity  
13 has been subjected to processing the residue of that pesticide  
14 chemical remaining in or on that processed food is, notwithstanding  
15 the provisions of subparagraph (v) and this subdivision, not be  
16 considered unsafe if that residue in or on the raw agricultural  
17 commodity has been removed to the extent possible in good  
18 manufacturing practice and if the concentration of that residue in  
19 the processed food when ready to eat is not greater than the  
20 tolerance prescribed for the raw agricultural commodity.

21 (v) Any added poisonous or deleterious substance, any food  
22 additive, and pesticide chemical in or on a raw agricultural  
23 commodity, or any color additive is considered unsafe for the  
24 purpose of application of this definition, unless there is in  
25 effect a federal regulation or exemption from regulation under the  
26 federal act, meat inspection act, poultry product inspection act,  
27 or other federal acts, or a rule adopted under this act limiting

1 the quantity of the substance, and the use or intended use of the  
2 substance, and the use or intended use of the substance conforms to  
3 the terms prescribed by the rule.

4 (vi) It is or contains a new animal drug or conversion product  
5 of a new animal drug that is unsafe within the meaning of section  
6 512 of the federal act, 21 ~~U.S.C.~~ **USC** 512.

7 (vii) It consists in whole or in part of a diseased,  
8 contaminated, filthy, putrid, or decomposed substance or it is  
9 otherwise unfit for food.

10 (viii) It has been produced, prepared, packed, or held under  
11 insanitary conditions in which it may have become contaminated with  
12 filth or in which it may have been rendered diseased, unwholesome,  
13 or injurious to health.

14 (ix) It is the product of a diseased animal or an animal that  
15 has died other than by slaughter or that has been fed uncooked  
16 garbage or uncooked offal from a slaughterhouse.

17 (x) Its container is composed, in whole or in part, of any  
18 poisonous or deleterious substance that may render the contents  
19 injurious to health.

20 (xi) A valuable constituent has been in whole or in part  
21 omitted or abstracted from the food; a substance has been  
22 substituted wholly or in part for the food; damage or inferiority  
23 has been concealed in any manner; or a substance has been added to  
24 the food or mixed or packed with the food so as to increase its  
25 bulk or weight, reduce its quality or strength, or make it appear  
26 better or of greater value than it is.

27 (xii) It is confectionery and has partially or completely

1 imbedded in it any nonnutritive object except in the case of any  
2 nonnutritive object if, as provided by rules, the object is of  
3 practical functional value to the confectionery product and would  
4 not render the product injurious or hazardous to health; it bears  
5 or contains any alcohol other than alcohol not in excess of 1/2 of  
6 1% by volume derived solely from the use of flavoring extracts; or  
7 it bears or contains any nonnutritive substance except a  
8 nonnutritive substance such as harmless coloring, harmless  
9 flavoring, harmless resinous glaze not in excess of 4/10 of 1%,  
10 harmless natural wax not in excess of 4/10 of 1%, harmless natural  
11 gum and pectin or to any chewing gum by reason of its containing  
12 harmless nonnutritive masticatory substances which is in or on  
13 confectionery by reason of its use for some practical functional  
14 purpose in the manufacture, packaging, or storage of such  
15 confectionery if the use of the substance does not promote  
16 deception of the consumer or otherwise result in adulteration or  
17 misbranding in violation of the provisions of this act. For the  
18 purpose of avoiding or resolving uncertainty as to the application  
19 of this subdivision, the director may issue rules allowing or  
20 prohibiting the use of particular nonnutritive substances.

21 (xiii) It is or bears or contains any color additive that is  
22 unsafe within the meaning of subparagraph (v).

23 (xiv) It has been intentionally subjected to radiation, unless  
24 the use of the radiation was in conformity with a rule or exemption  
25 under this act or a regulation or exemption under the federal act.

26 (xv) It is bottled water that contains a substance at a level  
27 higher than allowed under this act.

1           (b) "Advertisement" means a representation disseminated in any  
2 manner or by any means, other than by labeling, for the purpose of  
3 inducing, or which is likely to induce, directly or indirectly, the  
4 purchase of food.

5           (c) "Bed and breakfast" means a private residence that offers  
6 sleeping accommodations to transient tenants in 14 or fewer rooms  
7 for rent, is the innkeeper's residence in which the innkeeper  
8 resides while renting the rooms to transient tenants, and serves  
9 breakfasts at no extra cost to its transient tenants. A bed and  
10 breakfast is not considered a food service establishment if exempt  
11 under section 1107(l) (iii) or (iv).

12           (d) "Color additive" means a dye, pigment, or other substance  
13 made by process of synthesis or similar artifice or extracted,  
14 isolated, or otherwise derived, with or without intermediate or  
15 final change of identity from a vegetable, animal, mineral, or  
16 other source, or when added or applied to a food or any part of a  
17 food is capable alone or through reaction with other substance of  
18 imparting color to the food. Color additive does not include any  
19 material that is exempt or hereafter is exempted under the federal  
20 act. This subdivision does not apply to any pesticide chemical,  
21 soil or plant nutrient, or other agricultural chemical solely  
22 because of its effect in aiding, retarding, or otherwise affecting,  
23 directly or indirectly, the growth of other natural physiological  
24 process of produce of the soil and thereby affecting its color,  
25 whether before or after harvest. Color includes black, white, and  
26 intermediate grays.

27           (e) "Contaminated with filth" means contamination applicable

1 to any food not securely protected from dust, dirt, and, as far as  
2 may be necessary by all reasonable means, from all foreign or  
3 injurious contaminations.

4 (f) "Continental breakfast" means the serving of only ~~non-~~  
5 ~~potentially hazardous~~ **NON-POTENTIALLY HAZARDOUS** food such as a  
6 roll, pastry or doughnut, fruit juice, or hot beverage, but may  
7 also include individual portions of milk and other items incidental  
8 to those foods.

9 (G) **"COTTAGE FOOD OPERATION" MEANS A PERSON WHO PRODUCES OR**  
10 **PACKAGES NON-POTENTIALLY HAZARDOUS FOOD IN A KITCHEN OF THAT**  
11 **PERSON'S PRIMARY DOMESTIC RESIDENCE.**

12 (H) ~~(g)~~ "Critical violation" or "critical item" means a  
13 violation of the food code that the director determines is more  
14 likely than other violations to contribute to food contamination,  
15 illness to humans, or environmental health hazard.

16 Sec. 1109. As used in this act:

17 (a) "Imminent or substantial hazard" means a condition at a  
18 food establishment that the director determines requires immediate  
19 action to prevent endangering the health of people.

20 (b) "Label" means a display of written, printed, or graphic  
21 matter upon the immediate container of any article and includes a  
22 requirement imposed under this act that any word, statement, or  
23 other information appearing on the display also appear on the  
24 outside container or wrapper of the retail package of the article  
25 or be easily legible through the outside container or wrapper.

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

1 or accompanying the article.

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

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

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

17 (g) "Local health department" means that term as defined in  
18 section 1105 of the public health code, MCL 333.1105, and having  
19 those powers and duties as described in part 24 of the public  
20 health code, MCL 333.2401 to 333.2498.

21 (h) "Misbranded" means food to which any of the following  
22 apply:

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

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

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

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

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

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

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

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

24           (A) A food for which a standard of quality has been prescribed  
25 by this act or rules and its quality falls below such standard  
26 unless its label bears, in such manner and form as such rules  
27 specify, a statement that it falls below such standard.

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

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

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

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

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 packaging and labeling requirements  
27 applicable to such color additive prescribed under the provisions

1 of the federal act.

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

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

8 (K) "NON-POTENTIALLY HAZARDOUS FOOD" MEANS THAT TERM AS  
9 DEFINED IN THE FOOD CODE, WHICH INCLUDES, BUT IS NOT LIMITED TO,  
10 BAKED GOODS, JAMS, JELLIES, CANDY, SNACK FOOD, CEREAL, GRANOLA, DRY  
11 MIXES, VINEGAR, AND DRIED HERBS. NON-POTENTIALLY HAZARDOUS FOOD  
12 DOES NOT INCLUDE HOME-CANNED LOW-ACID OR ACIDIFIED VEGETABLES,  
13 HOME-CANNED SALSA, OR HOME-CANNED FOOD; FOOD SERVICE ITEMS; READY-  
14 TO-EAT MEALS, MEAT, SANDWICHES, CHEESE, OR CUSTARD PIES; GARLIC IN  
15 OIL; FOOD THAT REQUIRES TEMPERATURE CONTROL FOR SAFETY; AND BOTTLED  
16 WATER, HOME-PRODUCED ICE PRODUCTS, AND OTHER BEVERAGES AND  
17 PRODUCTS.

18 (l) ~~(k)~~—"Person" means an individual, sole proprietorship,  
19 partnership, corporation, association, or other legal entity.

20 (M) ~~(l)~~—"Pesticide chemical" means any substance that, alone,  
21 in chemical combination, or in formulation with 1 or more other  
22 substances, is a pesticide within the meaning of the federal  
23 insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat.  
24 973, 7 U.S.C.—USC 136 to 136i, 136j to 136r, and 136s to 136y, and  
25 is used in the production, storage, or transportation of raw  
26 agricultural commodities.

27 (N) ~~(m)~~—"Principal display panel" means that part of a label

1 that is most likely to be displayed, presented, shown, or examined  
2 under normal and customary conditions of display for retail sale.

3 (O) ~~(n)~~—"Public health code" means 1978 PA 368, MCL 333.1101  
4 to 333.25211.

5 SEC. 4102. (1) A COTTAGE FOOD OPERATION IS EXEMPT FROM THE  
6 LICENSING AND INSPECTION PROVISIONS OF THIS ACT. THIS EXEMPTION  
7 DOES NOT INCLUDE AN EXEMPTION FROM THE LABELING, ADULTERATION, AND  
8 OTHER STANDARDS IMPOSED IN THIS SECTION OR UNDER THIS ACT, OR BOTH.

9 (2) IN ADDITION TO THE OTHER LABELING AND DISCLOSURE  
10 REQUIREMENTS IMPOSED BY THIS ACT, A COTTAGE FOOD OPERATION SHALL  
11 PLACE ON THE LABEL OF ANY FOOD IT PRODUCES OR PACKAGES A STATEMENT  
12 THAT SUBSTANTIALLY COMPLIES WITH THE FOLLOWING:

13 "MADE IN A HOME KITCHEN THAT HAS NOT BEEN INSPECTED BY THE  
14 MICHIGAN DEPARTMENT OF AGRICULTURE."

15 (3) THE PERMISSIBLE SALE LOCATION OF NON-POTENTIALLY HAZARDOUS  
16 FOOD BY A COTTAGE FOOD OPERATION IS LIMITED TO HOMES, FARM MARKETS,  
17 OR ROADSIDE STANDS; MUNICIPAL FARMERS MARKETS; COUNTY FAIRS; AND  
18 TOWN CELEBRATIONS, FESTIVALS, AND EVENTS. A COTTAGE FOOD OPERATION  
19 CLAIMING AN EXEMPTION FROM LICENSURE UNDER THIS SECTION IS NOT  
20 ALLOWED TO SELL NON-POTENTIALLY HAZARDOUS FOOD AT CRAFT SHOWS, FLEA  
21 MARKETS, OR OTHER FOR-PROFIT EVENTS; BY MEANS OF THE INTERNET OR  
22 OTHER MEDIA INSIDE OR OUTSIDE THIS STATE; AT PERMANENT SALES VENUES  
23 OTHER THAN FARMERS MARKETS, HOMES, OR ROADSIDE STANDS; OR BY MEANS  
24 OF CONSIGNMENT OR IN OTHER LICENSED RETAIL ESTABLISHMENTS.

25 (4) THE GROSS SALES OF NON-POTENTIALLY HAZARDOUS FOOD SHALL  
26 NOT EXCEED \$15,000.00 ANNUALLY. THE DEPARTMENT MAY REQUEST IN  
27 WRITING DOCUMENTATION TO VERIFY THE GROSS SALES FIGURE.

1           (5) AN EXEMPTION UNDER THIS SECTION DOES NOT AFFECT THE  
2 APPLICATION OF ANY OTHER STATE OR FEDERAL LAWS OR ANY APPLICABLE  
3 ORDINANCES ENACTED BY ANY LOCAL UNIT OF GOVERNMENT.