

Legislative Analysis



COTTAGE FOOD PRODUCTS AND OPERATIONS

House Bill 5671 (H-3) as reported from committee
Sponsor: Rep. Julie Alexander

House Bill 5704 (H-2) as reported from committee
Sponsor: Rep. Annette Glenn

Committee: Agriculture
Complete to 3-23-22

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5671 would amend the Food Law to allow a *cottage food product* to be sold by internet or mail order or be delivered by a third-party food delivery platform under certain conditions, to increase the annual sales that a *cottage food operation* can have, and to allow a cottage food operation to register with the MSU Product Center and use its registration number instead of a business address on its product labels.

Cottage food product is defined as a food that is not potentially hazardous food as that term is defined in the food code.¹ Examples of cottage food product include jams, jellies, dried fruit, candy, cereal, granola, dry mixes, vinegar, dried herbs, and baked goods that do not require temperature control for safety. Cottage food does not include any potentially hazardous food regulated under 21 CFR parts 113 and 114, such as meat and poultry products, salsa, milk products, bottled water and other beverages, and home-produced ice products. Cottage food also does not include canned low-acid fruits or acidified vegetables and other canned foods except for jams, jellies, and preserves as defined in 21 CFR part 150.

Cottage food operation is defined as a person who produces or packages cottage food products only in a kitchen of that person's primary domestic residence in Michigan.

Labeling

The act requires a cottage food operation to properly label food products before sale, which among other things currently includes placing the name and address of the business of the cottage food operation on the label.

The bill would allow the label to include either the name and address of the business *or* the name, telephone number, and registration number (described below) issued for the cottage food operation.

Sales

Currently under the act, cottage food products may only be sold directly from the cottage food operation to the consumer, and specifically not by internet or mail order. The bill would allow internet or mail orders, as well as delivery to a consumer through a *third-party food delivery platform*, if the cottage food operation provides an opportunity for a consumer to *directly*

¹ "Food Code, 2009 Recommendations of the United States Public Health Service Food and Drug Administration."
<https://www.fda.gov/food/fda-food-code/food-code-2009>

interact with the operation before the product is sold. A cottage food product sold by internet or mail order or delivered through a third-party food delivery platform would have to be sold or delivered only to a consumer in Michigan.

Third-party food delivery platform would mean a business engaging in the service of delivery from a cottage food operation or online food ordering and delivery from a food service establishment to a consumer.

Directly interact with would include either a face-to-face meeting or a ***virtual meeting***, which would include meetings in which communication occurs electronically in a manner that allows two-way communication so that participants can see or be seen and hear or be heard by all parties to the communication.

Additionally, the act currently limits the gross sales of cottage food products by a cottage food operation to \$25,000 annually. The bill would increase this limit to \$40,000 annually through January 1, 2024. After that date, MDARD would have to annually adjust the gross sales amount by the percentage by which the ***Detroit Consumer Price Index*** exceeds or is less than the Detroit Consumer Price Index for the preceding calendar year.

Detroit Consumer Price Index would mean the most comprehensive index of consumer prices available for the Detroit area from the United States Department of Labor, Bureau of Labor Statistics.

Registration

Under the bill, a cottage food operation could register with, and obtain a registration number from, the MSU Product Center *if* the MSU Product Center administered a registration program for cottage food operations and made the records of that program available to MDARD upon request. The MSU Product Center could do both of the following:

- Issue a document that evidences the granting of registration and contains an identifying number unique to a cottage food operation.
- Collect a one-time registration fee of up to \$50 to administer the registration program.

A cottage food operation that registered with the MSU Product Center would have to include on its product labels the registration number issued to the operation. A cottage food operation that did not register with the MSU Product Center would have to continue to include on its product labels the name and address of the operation.

Information obtained from this registration process would be exempt from disclosure under the Freedom of Information Act (FOIA).

MCL 289.4102

House Bill 5704 would amend the Food Law to add the definition for ***third-party food delivery platform***, described in context above.

MCL 289.1105 and 289.1111

The bills are tie-barred to one another, which means that neither would take effect unless both were enacted.

FISCAL IMPACT:

The Food Law establishes a licensing and regulatory program for the commercial food processing industry and gives the director of MDARD the responsibility and authority to administer and enforce the act. Under that authority, MDARD administers a Food Safety and Inspection program, which licenses, regulates, and inspects approximately 18,000 food establishments, including food processing plants, retail grocery and convenience stores, distribution centers, markets, bottled water dispensers, vending machines, and concessions at fairs. This program helps prevent the sale of adulterated or unsafe food products, outbreaks of food-borne disease, and fraud and deception in the sale of food products. Activities also include food establishment plan review, country-of-origin labeling inspections, and food recall response. There are about 60 field food inspectors and six regional supervisors in this program.

Although we do not have a breakdown of costs of the Food Safety and Inspection program specifically, the FY 2021-22 MDARD budget includes funding of \$18.2 million (\$9.2 million General Fund) for the broader Food Safety and Quality Assurance program.

MDARD indicates that, to the extent that the MSU Product Center assumes responsibility for administration of the registration program, House Bill 5671 would have no material fiscal impact on the department. MDARD also indicates that House Bill 5704 has no material fiscal impact on the department.

POSITIONS:

Representatives of the following entities testified in support of HB 5704 (2-16-22):

- Designed by Daddy Custom Cakery
- Institute for Justice
- Above Measure Cookies

The following entities indicated support for the bills:

- Mackinac Center for Public Policy (2-16-22)
- Michigan Farm Bureau (3-9-22)

The following entities indicated a neutral position on the bills (3-9-22):

- Department of Agriculture and Rural Development
- Michigan Association of Environmental Health Administrators
- Michigan Association for Local Public Health

Legislative Analyst: Emily S. Smith
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.