

SUBSTITUTE FOR
HOUSE BILL NO. 5704

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1105 and 1111 (MCL 289.1105 and 289.1111),
section 1105 as amended by 2014 PA 516 and section 1111 as amended
by 2018 PA 92.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1105. (1) As used in this act:
- 2 (a) "Adulterated" means ~~food to which~~ any of the following
- 3 ~~apply~~: **as applied to food:**
- 4 (i) It bears or contains any poisonous or deleterious substance
- 5 that may render it injurious to health unless the substance is not
- 6 an added substance and the quantity of that substance in the food
- 7 does not ordinarily render it injurious to health.

(ii) It bears or contains any added poisonous or added deleterious substance, other than a substance that is a pesticide chemical in or on a raw agricultural commodity, ~~or~~ a food additive, ~~or~~ or a color additive considered unsafe within the meaning of subsection (2).

(iii) It is a raw agricultural commodity that bears or contains a pesticide chemical considered unsafe within the meaning of subsection (2).

(iv) It bears or contains any food additive considered unsafe within the meaning of subsection (2). However, if a pesticide chemical ~~has been~~ **is** used in or on a raw agricultural commodity in conformity with an exemption granted or limitation prescribed under subsection (2) and the raw agricultural commodity ~~has been~~ **is** subjected to processing, the residue of that pesticide chemical remaining in or on that processed food is, notwithstanding the provisions of subsection (2) and this subdivision, not considered unsafe if that residue in or on the raw agricultural commodity ~~has been~~ **is** removed to the extent possible in good manufacturing practice and if the concentration of that residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(v) It is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section ~~360b~~ **512** of the federal act, 21 USC 360b.

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

(vii) It has been produced, prepared, packed, or held under unsanitary conditions in which it may have become contaminated with

1 filth or in which it may have been rendered diseased, unwholesome,
2 or injurious to health.

3 (viii) It is the product of a diseased animal or ~~an~~ animal that
4 has died other than by slaughter or ~~that~~ has been fed uncooked
5 garbage or uncooked offal from a slaughterhouse.

6 (ix) Its container is composed, in whole or in part, of any
7 poisonous or deleterious substance that may render the contents
8 injurious to health.

9 (x) A valuable constituent ~~has been~~ **is** in whole or in part
10 omitted or abstracted from the food; a substance ~~has been~~ **is**
11 substituted wholly or in part for the food; damage or inferiority
12 ~~has been~~ **is** concealed in any manner; or a substance ~~has been~~ **is**
13 added to, ~~the food or mixed~~ **with**, or packed with the food ~~so as to~~
14 increase its bulk or weight, reduce its quality or strength, or
15 make it appear better or of greater value than it is.

16 (xi) It is confectionery and has partially or completely
17 imbedded in it any nonnutritive object except if, as provided by
18 rules, the object is of practical functional value to the
19 confectionery product and would not render the product injurious or
20 hazardous to health; it is confectionery and bears or contains any
21 alcohol other than alcohol not in excess of ~~1/2 of 1%~~ **0.5%** by
22 volume derived solely from the use of flavoring extracts; or it is
23 confectionery and bears or contains ~~any~~ **a** nonnutritive substance
24 except a nonnutritive substance such as harmless coloring, harmless
25 flavoring, harmless resinous glaze not in excess of ~~4/10 of 1%~~,
26 **0.4%**, harmless natural wax not in excess of ~~4/10 of 1%~~, **0.4%**,
27 harmless natural gum and pectin or any chewing gum by reason of its
28 containing harmless nonnutritive masticatory substances which is in
29 or on the confectionery by reason of its use for some practical

1 functional purpose in the manufacture, packaging, or storage of
2 such confectionery if the use of the substance does not promote
3 deception of the consumer or otherwise result in adulteration or
4 misbranding in violation of this act. For the purpose of avoiding
5 or resolving uncertainty as to the application of this subdivision,
6 the director may issue rules allowing or prohibiting the use of
7 particular nonnutritive substances.

8 (xii) It is, ~~or bears~~, or contains any color additive that is
9 unsafe within the meaning of subsection (2).

10 (xiii) It ~~has been~~ **is** intentionally subjected to radiation,
11 unless the use of the radiation ~~was~~ **is** in conformity with a rule or
12 exemption under this act or a regulation or exemption under the
13 federal act.

14 (xiv) It is bottled water that contains a substance at a level
15 higher than allowed under this act.

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

20 (c) "Agricultural use operation" means a maple syrup
21 production facility or similar food establishment that finishes a
22 raw commodity and is integral to the agricultural production of,
23 and is located at, a farm. An agricultural use operation is not
24 considered a food processor or retail processing operation for
25 purposes of personal or real property but must meet those same
26 standards and licensing requirements ~~as prescribed in~~ **under** this
27 act.

28 (d) "Bed and breakfast" means a private residence that offers
29 sleeping accommodations to transient tenants in 14 or fewer rooms

1 for rent, is the innkeeper's residence ~~in which~~ **where** the innkeeper
2 resides while renting the rooms to transient tenants, and serves
3 breakfasts, or other meals in the case of a bed and breakfast
4 described in section 1107(t) (ii), at no extra cost to its transient
5 tenants. A bed and breakfast is not a food service establishment if
6 exempt under section 1107(t) (ii) or (iii).

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

22 (f) "Consumer" means an individual who is a member of the
23 public ~~, that~~ takes possession of food, ~~is~~ **does** not ~~functioning~~
24 **function** in the capacity of an operator of a food establishment or
25 food processor, and does not offer the food for resale.

26 (g) "Contaminated with filth" means contaminated as a result
27 of not being securely protected from dust, dirt, and, as far as may
28 be necessary by all reasonable means, from all foreign or injurious
29 ~~contaminations~~ **contaminants**.

(h) "Continental breakfast" means the serving of only non-potentially-hazardous food such as a roll, pastry or doughnut, fruit juice, or hot beverage, but may also include individual portions of milk and other items incidental to those foods.

(i) "Core item" means a provision in the food code that is not designated as a priority item or a priority foundation item. Core item includes both of the following:

(i) ~~(A)~~ An item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

(ii) ~~(B)~~ The requirements of ~~section~~ **sections** 2129(2) and 6152(1).

(j) "Cottage food operation" means ~~a person~~ **an individual** who produces or packages cottage food products only in a kitchen of that ~~person's~~ **individual's** primary domestic residence within this state.

(k) "Cottage food product" means a food that is not potentially hazardous food, as that term is defined in the food code. ~~Examples of cottage~~ **Cottage** food product ~~include,~~ **includes,** but ~~are~~ **is** not limited to, 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 product does not include any **of the following:**

(i) **A** potentially hazardous food regulated under 21 CFR parts 113 and 114, ~~examples of which include,~~ **including,** but ~~are~~ not limited to, meat and poultry products, ~~+~~ salsa, ~~+~~ milk products, ~~+~~ bottled water and other beverages, ~~+~~ and home-produced ice products. ~~Cottage food product also does not include canned~~

1 (ii) **Canned** low-acid fruits or acidified vegetables. ~~and other~~

2 (iii) **Other** canned foods except for jams, jellies, and preserves
3 as **those terms are** defined in 21 CFR part 150.

4 (2) ~~Any~~**An** added poisonous or deleterious substance, food
5 additive, pesticide chemical in or on a raw agricultural commodity,
6 or color additive is considered unsafe for the purpose of
7 subsection (1)(a), unless there is in effect a federal regulation
8 or exemption from regulation under the federal act, the federal
9 meat inspection act, 21 USC 601 to 683, the poultry products
10 inspection act, 21 USC 451 to 472, or another federal statute, or a
11 rule limiting the quantity of the substance, and the use or
12 intended use of the substance, and the use or intended use of the
13 substance conforms to the terms prescribed by the federal
14 regulation or exemption or ~~the~~rule.

15 Sec. 1111. As used in this act:

16 (a) "Raw agricultural commodity" means any food in its raw or
17 natural state including fruits that are washed, colored, or
18 otherwise treated in their unpeeled natural form before marketing.

19 (b) "Regulatory authority" means the department, ~~the~~local
20 health department, or ~~the~~authorized representative having
21 jurisdiction over the food establishment.

22 (c) "Retail food establishment" means an operation that sells
23 or offers to sell food directly to a consumer. Retail food
24 establishment includes both a retail grocery and a food service
25 establishment, but does not include a food processor.

26 (d) "Retail grocery" means an operation that sells or offers
27 to sell food to consumers for off-premises consumption. Food for
28 off-premises consumption does not include take-out food intended
29 for immediate consumption.

1 (e) "Rules" means administrative rules promulgated under this
2 act pursuant to the administrative procedures act of 1969, 1969 PA
3 306, MCL 24.201 to 24.328.

4 (f) "Shellfish dealer" means an interstate wholesaler handling
5 shellfish.

6 (g) "Shellfish dealer certification" means the issuance of a
7 numbered certificate to a person indicating that the person is in
8 compliance with the requirements of the guide for the control of
9 molluscan shellfish and ~~that the person~~ has permission from the
10 department to conduct 1 or more of the following shellfish
11 activities, as defined in the guide for the control of molluscan
12 shellfish:

13 (i) Shellstock shipper.

14 (ii) Shucker packer.

15 (iii) Repacker or reshipper.

16 (h) "Smoked fish rules" means R 285.569.1 to R 285.569.19 of
17 the Michigan Administrative Code.

18 (i) "Special transitory food unit" means a temporary food
19 establishment that is licensed to operate throughout the state
20 without the 14-day limits or a mobile food establishment that is
21 not required to return to a commissary.

22 (j) "Staple foods" does not include accessory foods such as
23 coffee, tea, cocoa, soda, noncarbonated drinks such as sports
24 drinks, punches, and flavored waters, candy, condiments, spices,
25 hot foods, or foods ready to go or made to take out, such as
26 prepared sandwiches or salads.

27 (k) "Sulfiting agents" means any of the following:

28 (i) Sulfur dioxide.

29 (ii) Sodium sulfite.

(iii) Sodium bisulfite.

(iv) Potassium bisulfite.

(v) Sodium metabisulfite.

(vi) Potassium metabisulfite.

(l) "Temporary food establishment" means a food establishment that operates at a fixed location for a temporary period not to exceed 14 consecutive days.

(m) "Temporary license" means a written authorization issued by the director to operate for a specified limited time period.

(n) "Third-party food delivery platform" means 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.

(o) ~~(n)~~ "Transient tenant" means ~~a person~~ **an individual** who rents a room in a bed and breakfast for fewer than 30 consecutive days.

(p) ~~(o)~~ "Trimming" means removing leaves, roots, and other extraneous materials in preparation for grading, sorting, and sale as a whole fruit or vegetable. Trimming does not remove the peel or core and does not further cut the whole fruit or vegetable.

(q) ~~(p)~~ "U.S. standards for shell eggs" means "United States Standards, Grades, and Weight Classes for Shell Eggs", AMS 56 (July 20, 2000), United States Department of Agriculture.

(r) ~~(q)~~ "Vending company base location" means a vending machine location or other food establishment required to be separately licensed under section 4105(5).

(s) ~~(r)~~ "Vending machine" means a self-service device that, ~~upon insertion of~~ **after inserting** a coin, paper currency, token, card, or key, or by manual operation, dispenses **a unit** ~~servings~~

serving of food in bulk or in ~~packages~~ **a package** without the necessity of replenishing the device between each vending operation. Vending machine does not include any of the following:

(i) A device that dispenses only bottled or canned soft drinks, ~~or~~ other packaged nonperishable foods or beverages, ~~or~~ bulk ball gum, nuts, ~~and or~~ panned candies.

(ii) A ~~water-dispensing~~ **water dispensing** machine that is registered under ~~chapter IV.~~ **section 4115.**

(t) ~~(s)~~ "Vending machine location" means the room, enclosure, space, or area in which 1 or more vending machines are installed and operated, or a micro market.

(u) ~~(t)~~ "Wholesale" means selling other than directly to consumers.

(v) ~~(u)~~ "Wild game" means animals from their natural state and not cultivated, domesticated, or tamed.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5671 of the 101st Legislature is enacted into law.