

HOUSE BILL NO. 5704

February 01, 2022, Introduced by Rep. Glenn and referred to the Committee on Agriculture.

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1105 and 4102 (MCL 289.1105 and 289.4102),
section 1105 as amended by 2014 PA 516 and section 4102 as amended
by 2012 PA 178.

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

1 that may render it injurious to health unless the substance is not
2 an added substance and the quantity of that substance in the food
3 does not ordinarily render it injurious to health.

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

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

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

25 (v) It is or contains a new animal drug or conversion product
26 of a new animal drug that is unsafe within the meaning of section
27 ~~360b~~**512** of the federal act, 21 USC 360b.

28 (vi) It consists in whole or in part of a diseased,
29 contaminated, filthy, putrid, or decomposed substance or it is

1 otherwise unfit for food.

2 (vii) It has been produced, prepared, packed, or held under
3 unsanitary conditions in which it may have become contaminated with
4 filth or in which it may have been rendered diseased, unwholesome,
5 or injurious to health.

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

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

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

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

1 harmless natural gum and pectin or any chewing gum by reason of its
2 containing harmless nonnutritive masticatory substances which is in
3 or on the confectionery by reason of its use for some practical
4 functional purpose in the manufacture, packaging, or storage of
5 such confectionery if the use of the substance does not promote
6 deception of the consumer or otherwise result in adulteration or
7 misbranding in violation of this act. For the purpose of avoiding
8 or resolving uncertainty as to the application of this subdivision,
9 the director may issue rules allowing or prohibiting the use of
10 particular nonnutritive substances.

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

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

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

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

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

1 act.

2 (d) "Bed and breakfast" means a private residence that offers
3 sleeping accommodations to transient tenants in 14 or fewer rooms
4 for rent, is the innkeeper's residence ~~in which~~ **where** the innkeeper
5 resides while renting the rooms to transient tenants, and serves
6 breakfasts, or other meals in the case of a bed and breakfast
7 described in section 1107(t) (ii), at no extra cost to its transient
8 tenants. A bed and breakfast is not a food service establishment if
9 exempt under section 1107(t) (ii) or (iii).

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

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

29 (g) "Contaminated with filth" means contaminated as a result

of not being securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious ~~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

1 limited to, meat and poultry products, ~~+~~salsa, ~~+~~milk products, ~~+~~
 2 bottled water and other beverages, ~~+~~and home-produced ice
 3 products. ~~Cottage food product also does not include canned~~

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

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

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

18 Sec. 4102. (1) A cottage food operation is exempt from the
 19 licensing and evaluation provisions of this act. This exemption
 20 does not include an exemption from the adulteration and other
 21 standards imposed in this section or under this act, or both, and
 22 does not limit the ability of the department to take appropriate
 23 enforcement action for applicable violations as described in
 24 section 5101. This subsection does not require a cottage food
 25 operation to meet the standards contained in 21 CFR part 110 or the
 26 food code.

27 (2) Cottage food products ~~shall~~**must** be prepackaged and
 28 properly labeled ~~prior to~~**before** sale.

29 (3) ~~At~~**Except as otherwise provided in subsection (6), at a**

1 minimum, a cottage food operation shall place on the label of any
2 food it produces or packages the following information:

3 (a) The name and address of the business of **or registration**
4 **number issued under subsection (6) for** the cottage food operation,
5 **as applicable.**

6 (b) The name of the cottage food product.

7 (c) The ingredients of the cottage food product, in descending
8 order of predominance by weight.

9 (d) The net weight or net volume of the cottage food product.

10 (e) Allergen labeling as specified by federal labeling
11 requirements.

12 (f) If any nutritional claim is made, appropriate labeling as
13 specified by federal labeling requirements.

14 (g) The following statement printed in at least the equivalent
15 of 11-point font size in a color that provides a clear contrast to
16 the background: "Made in a home kitchen that has not been inspected
17 by the Michigan department of agriculture and rural development."

18 (4) Cottage food products may be sold **in food service**
19 **establishments and** directly from the cottage food operation to the
20 consumer, ~~only, and not~~ **including** by internet or mail order. Sales
21 by consignment or at wholesale are prohibited.

22 ~~(5) The gross sales of cottage food products by a cottage food~~
23 ~~operation shall not exceed \$20,000.00 annually until December 31,~~
24 ~~2017. After December 31, 2017, the gross sales of cottage food~~
25 ~~products by a cottage food operation shall not exceed \$25,000.00~~
26 ~~annually. For the purposes of this subsection, gross sales shall be~~
27 ~~computed on the basis of the amount of gross sales within or at a~~
28 ~~particular domestic residence and shall not be computed on a per-~~
29 ~~person basis within or at that domestic residence. The department~~

1 ~~may request in writing documentation to verify the annual gross~~
2 ~~sales figure.~~

3 ~~(6) Cottage food products shall be stored only in the primary~~
4 ~~domestic residence.~~

5 (5) ~~(7)~~—An exemption under this section does not affect the
6 application of any other state or federal laws or any applicable
7 ordinances enacted by any local unit of government.

8 (6) A cottage food operation may register with the department.
9 A cottage food operation that wishes to register shall register on
10 a form and in a manner prescribed by the department. The department
11 shall issue a document to the cottage food operation that evidences
12 the granting of a registration under this subsection. The document
13 that evidences the granting of a registration must contain an
14 identifying number unique to the cottage food operation. A cottage
15 food operation that registers with the department under this
16 subsection shall include on the label described under subsection
17 (3) the registration number issued to the cottage food operation. A
18 cottage food operation that does not register with the department
19 under this subsection shall include on the label described in
20 subsection (3) the name and address of the cottage food operation.
21 (7) The department shall not charge a registration fee or any
22 other fee to a cottage food operation.