

SUBSTITUTE FOR
HOUSE BILL NO. 4122

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending sections 1105, 1111, and 4102 (MCL 289.1105, 289.1111,
and 289.4102), section 1105 as amended by 2014 PA 516, section 1111
as amended by 2018 PA 92, 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:
4 (i) It bears or contains ~~any~~**a** poisonous or deleterious
5 substance that may render ~~it~~**the food** injurious to health unless
6 the substance is not an added substance and the quantity of that

1 substance in the food does not ordinarily render it injurious to
2 health.

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

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

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

24 (v) It is or contains a new animal drug or conversion product
25 of a new animal drug that is unsafe within the meaning of section
26 ~~360b-101~~ of the federal act, 21 USC 360b.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (g) "Contaminated with filth" means contaminated as a result
29 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 who produces or
 packages cottage food products only in a kitchen of that person's
 primary domestic residence within this state.

(k) "Cottage food product" means a food that is not
~~potentially hazardous~~**a food that is time/temperature control for**
safety, 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 ~~potentially hazardous~~**of the following:**

(i) **Any** food regulated under 21 CFR parts **108**, 113, and 114,
~~examples of which include, but are not limited to, meat and poultry~~
~~products;~~**including** salsa. ~~;~~ ~~milk products;~~ ~~bottled water and other~~

~~beverages; and home-produced ice products. Cottage food product also does not include canned~~

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

(iii) **Other** canned foods except for **standardized** jams, jellies, and preserves as ~~defined~~ **described** in 21 CFR part 150.

(iv) **Meat and poultry products.**

(v) **Milk products.**

(vi) **Bottled water and other beverages.**

(vii) **Home-produced ice products.**

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

Sec. 1111. As used in this act:

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

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

(c) "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food

1 establishment includes both a retail grocery and a food service
2 establishment, but does not include a food processor.

3 (d) "Retail grocery" means an operation that sells or offers
4 to sell food to consumers for off-premises consumption. Food for
5 off-premises consumption does not include take-out food intended
6 for immediate consumption.

7 (e) "Rules" means administrative rules promulgated under this
8 act ~~pursuant to~~ **in accordance with** the administrative procedures
9 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

10 (f) "Shellfish dealer" means an interstate wholesaler handling
11 shellfish.

12 (g) "Shellfish dealer certification" means the issuance of a
13 numbered certificate to a person ~~indicating that~~ **indicates** that the
14 person is in compliance with the requirements of the guide for the
15 control of molluscan shellfish and ~~that the person has~~ permission
16 from the department to conduct 1 or more of the following shellfish
17 activities, as defined in the guide for the control of molluscan
18 shellfish:

19 (i) Shellstock shipper.

20 (ii) Shucker packer.

21 (iii) Repacker or reshipper.

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

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

28 (j) "Staple foods" does not include accessory foods such as
29 coffee, tea, cocoa, soda, noncarbonated drinks such as sports

1 drinks, punches, and flavored waters, candy, condiments, spices,
 2 hot foods, or foods ready to go or made to take out, such as
 3 prepared sandwiches or salads.

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

5 (i) Sulfur dioxide.

6 (ii) Sodium sulfite.

7 (iii) Sodium bisulfite.

8 (iv) Potassium bisulfite.

9 (v) Sodium metabisulfite.

10 (vi) Potassium metabisulfite.

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

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

16 **(n) "Third-party food delivery platform" means a business**
 17 **engaged in the service of delivery from a cottage food operation or**
 18 **online food ordering and delivery from a food service establishment**
 19 **to a consumer.**

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

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

27 (q) ~~(p)~~ "U.S. standards for shell eggs" means "United States
 28 Standards, Grades, and Weight Classes for Shell Eggs", AMS 56 (July
 29 20, 2000), United States Department of Agriculture.

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

4 **(s)** ~~(r)~~ "Vending machine" means a self-service device that,
 5 ~~upon insertion of~~ **after inserting** a coin, paper currency, token,
 6 card, or key, or by manual operation, dispenses ~~a unit serving~~
 7 **serving** of food in bulk or in ~~packages~~ **a package** without the
 8 necessity of replenishing the device between each vending
 9 operation. Vending machine does not include any of the following:

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

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

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

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

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

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

1 food code.

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

4 (3) ~~At a minimum, a~~**A** cottage food operation shall place on
5 the label of any food it produces or packages the following
6 information:

7 (a) ~~The~~**One of the following, as applicable:**

8 **(i) The** name and address of the business of the cottage food
9 operation.

10 **(ii) The name, telephone number, and registration number issued**
11 **under subsection (8) of the business of the cottage food operation.**

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

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

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

16 (e) Allergen labeling as specified by federal labeling
17 requirements.

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

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

24 (4) ~~Cottage~~**Except as otherwise provided in this subsection, a**
25 **cottage** food products ~~may~~**product must** be sold directly from the
26 cottage food operation to the consumer. ~~only, and not by internet~~
27 ~~or mail order.~~ Sales by consignment or at wholesale are prohibited.
28 **A cottage food product may be sold by internet or mail order or may**
29 **be delivered to a consumer through a third-party food delivery**

platform if the cottage food operation provides an opportunity for a consumer to directly interact with the cottage food operation before the cottage food product is sold. A cottage food product sold by internet or mail order or delivered through a third-party delivery platform must be sold or delivered only to a consumer in this state. As used in this subsection:

(a) "Directly interact with" includes either a face-to-face meeting or a virtual meeting.

(b) "Virtual meeting" includes, but is not limited to, a meeting in which communication occurs electronically in a manner that permits 2-way communication so that participants can see or be seen and hear or be heard by all parties to the communication.

~~(5) The gross sales of cottage food products by a cottage food operation shall not exceed \$20,000.00 annually until December 31, 2017. After December 31, 2017, the~~ **Except as otherwise provided in this subsection, the** gross sales of cottage food products by a cottage food operation ~~shall~~ **must** not exceed ~~\$25,000.00~~ **\$50,000.00** annually **until January 1, 2026. If the cottage food operation sells cottage food products at a price of \$250.00 or more per unit, the gross sales of the cottage food products by the cottage food operation must not exceed \$75,000.00 annually until January 1, 2026.** For the purposes of this subsection, gross sales ~~shall~~ **must** be computed on the basis of the amount of gross sales ~~within or at a particular domestic residence and shall not be computed on a per-~~ person basis within or at ~~that~~ **a particular** domestic residence. The department may request in writing documentation to verify the annual gross sales figure. **Beginning October 1, 2026, and by each October 1 thereafter, the department may adjust the gross sales amounts set under this subsection by the amount calculated by**

1 multiplying the sales limit in effect during the immediately
2 preceding fiscal year by the inflation adjustment factor and
3 rounding to the nearest whole dollar. The inflation adjustment
4 factor used under this subsection is equal to the 3-year average
5 July-June Consumer Price Index for the current fiscal year divided
6 by the 3-year average July-June Consumer Price Index for the
7 immediately preceding fiscal year, as determined by the department
8 of treasury using the Detroit Consumer Price Index. An inflation
9 adjustment factor used under this subsection must not be less than
10 \$1.00. As used in this subsection, "Detroit Consumer Price Index"
11 means the most comprehensive index of consumer prices available for
12 the Detroit-Warren-Dearborn area from the Bureau of Labor
13 Statistics of the United States Department of Labor.

14 (6) Cottage food products ~~shall~~**must** be stored only in the
15 primary domestic residence.

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

19 (8) If the MSU Product Center administers a registration
20 program for cottage food operations, the records of which must be
21 available to the department on request, a cottage food operation
22 may register with the MSU Product Center. The MSU Product Center
23 may do both of the following:

24 (a) Issue a document that evidences the granting of
25 registration and contains an identifying number unique to a cottage
26 food operation.

27 (b) Collect a 1-time registration fee of not more than \$50.00
28 to administer the registration program.

29 (9) A cottage food operation that registers with the MSU

1 Product Center under subsection (8) shall include on the label
2 described under subsection (3) the registration number issued to
3 the cottage food operation. A cottage food operation that does not
4 register with the MSU Product Center under subsection (8) shall
5 include on the label described in subsection (3) the name and
6 address of the cottage food operation.

7 (10) Information obtained under subsection (8) is exempt from
8 disclosure under the freedom of information act, 1976 PA 442, MCL
9 15.231 to 15.246.