

HOUSE BILL NO. 4333

March 23, 2023, Introduced by Reps. Alexander, Bierlein, DeSana, Smit, Roth, Beson, Kunse, DeBoyer, Neyer, Posthumus, Borton, Prestin, Maddock, Mueller, Harris, Johnsen, Slagh, Paquette, Mentzer, Filler, Farhat, Friske, Snyder, Jaime Greene, Meerman and VanderWall and referred to the Committee on Agriculture.

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~~ **as applied to food:**

1 (i) It bears or contains any poisonous or deleterious substance
2 that may render it injurious to health unless the substance is not
3 an added substance and the quantity of that substance in the food
4 does not ordinarily render it injurious to health.

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

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

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

26 (v) It is or contains a new animal drug or conversion product
27 of a new animal drug that is unsafe within the meaning of section
28 ~~360b~~**512** of the federal act, 21 USC 360b.

29 (vi) It consists in whole or in part of a diseased,

1 contaminated, filthy, putrid, or decomposed substance or it is
2 otherwise unfit for food.

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

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

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

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

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

1 0.4%, harmless natural wax not in excess of ~~4/10 of 1%~~, 0.4%,
2 harmless natural gum and pectin or any chewing gum by reason of its
3 containing harmless nonnutritive masticatory substances which is in
4 or on the confectionery by reason of its use for some practical
5 functional purpose in the manufacture, packaging, or storage of
6 such confectionery if the use of the substance does not promote
7 deception of the consumer or otherwise result in adulteration or
8 misbranding in violation of this act. For the purpose of avoiding
9 or resolving uncertainty as to the application of this subdivision,
10 the director may issue rules allowing or prohibiting the use of
11 particular nonnutritive substances.

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

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

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

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

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

1 standards and licensing requirements ~~as prescribed in~~ **under** this
2 act.

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

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

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

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

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

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

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

16 (ii) ~~(B)~~—The requirements of ~~section~~ **sections** 2129(2) and
17 6152(1).

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

22 (k) "Cottage food product" means a food that is not
23 potentially hazardous food, as that term is defined in the food
24 code. ~~Examples of cottage~~ **Cottage** food product ~~include,~~ **includes,**
25 but ~~are~~ **is** not limited to, jams, jellies, dried fruit, candy,
26 cereal, granola, dry mixes, vinegar, dried herbs, and baked goods
27 that do not require temperature control for safety. Cottage food
28 product does not include any **of the following:**

29 (i) **A** potentially hazardous food regulated under 21 CFR parts

1 113 and 114, ~~examples of which include,~~ **including**, but are not
2 limited to, meat and poultry products, ~~+~~salsa, ~~+~~milk products, ~~+~~
3 bottled water and other beverages, ~~+~~and home-produced ice
4 products. ~~Cottage food product also does not include canned~~

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

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

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

19 Sec. 1111. As used in this act:

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

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

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

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

5 (e) "Rules" means administrative rules promulgated under this
6 act pursuant to the administrative procedures act of 1969, 1969 PA
7 306, MCL 24.201 to 24.328.

8 (f) "Shellfish dealer" means an interstate wholesaler handling
9 shellfish.

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

17 (i) Shellstock shipper.

18 (ii) Shucker packer.

19 (iii) Repacker or reshipper.

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

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

26 (j) "Staple foods" does not include accessory foods such as
27 coffee, tea, cocoa, soda, noncarbonated drinks such as sports
28 drinks, punches, and flavored waters, candy, condiments, spices,
29 hot foods, or foods ready to go or made to take out, such as

1 prepared sandwiches or salads.

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

3 (i) Sulfur dioxide.

4 (ii) Sodium sulfite.

5 (iii) Sodium bisulfite.

6 (iv) Potassium bisulfite.

7 (v) Sodium metabisulfite.

8 (vi) Potassium metabisulfite.

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

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

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

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

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

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

28 (r) ~~(q)~~—"Vending company base location" means a vending
29 machine location or other food establishment required to be

1 separately licensed under section 4105(5).

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

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

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

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

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

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

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

29 (2) Cottage food products ~~shall~~ **must** be prepackaged and

1 properly labeled ~~prior to~~ **before** sale.

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

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

6 **(i) The name and address of the business of the cottage food**
7 **operation.**

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

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

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

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

14 (e) Allergen labeling as specified by federal labeling
15 requirements.

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

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

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

1 before the cottage food product is sold. A cottage food product
2 sold by internet or mail order or delivered through a third-party
3 delivery platform must be sold or delivered only to a consumer in
4 this state. As used in this subsection:

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

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

11 (5) ~~The gross sales of cottage food products by a cottage food~~
12 ~~operation shall not exceed \$20,000.00 annually until December 31,~~
13 ~~2017. After December 31, 2017, the~~ **The gross sales of cottage food**
14 **products by a cottage food operation shall** ~~shall~~ **must** not exceed
15 ~~\$25,000.00~~ **\$40,000.00 annually until January 1, 2024. After January**
16 **1, 2024, the department shall annually adjust the gross sales**
17 **amount in this subsection by the percentage by which the Detroit**
18 **Consumer Price Index exceeds or is less than the Detroit Consumer**
19 **Price Index for the preceding calendar year. For the purposes of**
20 **this subsection, gross sales shall** ~~shall~~ **must** be computed on the basis of
21 the amount of gross sales within or at a particular domestic
22 residence and shall not be computed on a per-person basis within or
23 at that domestic residence. The department may request in writing
24 documentation to verify the annual gross sales figure. **As used in**
25 **this subsection, "Detroit Consumer Price Index" means the most**
26 **comprehensive index of consumer prices available for the Detroit**
27 **area from the United States Department of Labor, Bureau of Labor**
28 **Statistics.**

29 (6) Cottage food products ~~shall~~ **must** be stored only in the

1 primary domestic residence.

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

5 (8) If the MSU Product Center administers a registration
6 program for cottage food operations, the records of which must be
7 available to the department upon request, a cottage food operation
8 may register with the MSU Product Center. The MSU Product Center
9 may do both of the following:

10 (a) Issue a document that evidences the granting of
11 registration and contains an identifying number unique to a cottage
12 food operation.

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

15 (9) A cottage food operation that registers with the MSU
16 Product Center under subsection (8) shall include on the label
17 described under subsection (3) the registration number issued to
18 the cottage food operation. A cottage food operation that does not
19 register with the MSU Product Center under subsection (8) shall
20 include on the label described in subsection (3) the name and
21 address of the cottage food operation.

22 (10) Information obtained under subsection (8) is exempt from
23 disclosure under the freedom of information act, 1976 PA 442, MCL
24 15.231 to 15.246.