

# Legislative Analysis

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## **FOOD LAW EXEMPTIONS: "COTTAGE FOOD OPERATIONS"; HONEY; MAPLE SYRUP**

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**House Bill 5280 (Substitute H-2)**  
**Sponsor: Rep. John Proos**

**House Bill 5837 (Substitute H-1)**  
**Sponsor: Rep. Pam Byrnes**

**House Bill 5843 (Substitute H-1)**  
**Sponsor: Rep. Vicki Barnett**

**Committee: Agriculture**  
**First Analysis (6-11-10)**

**BRIEF SUMMARY:** The bills would exempt "cottage food operations", as well as both retail outlets and processing facilities for honey and maple syrup from the licensing and inspection provisions of the Food Law of 2000, if they have annual gross sales of \$15,000 or less.

**FISCAL IMPACT:** A fiscal analysis is in process for House Bills 5280 and 5837. House Bill 5843 would have no apparent fiscal impact.

### ***THE APPARENT PROBLEM:***

The Michigan Farmers Market Association, developed in 2006, promotes the growth of farmers markets across the state, and increases the visibility of their products. The association offers information, networking, and resources to farmers markets, farmers, vendors, and consumers in an effort to create a thriving marketplace for local food and farm products. (See [www.farmersmarkets.msu.edu](http://www.farmersmarkets.msu.edu)) Organizers report a 13 percent increase in the number of Michigan farmers markets between 2008 and 2009.

Customarily the vendors who participate in a farmers market are small farm owners who seek local markets for their goods and produce. For example, fruit tree farmers sell apples and peaches, but also jellies, jams, and dried fruit. And, those who tend hives of bees in their fields, or stands of sugar maples, offer their honey and syrup to consumers whose purchases stimulate the local farm economy. These kinds of food producers are customarily called 'cottage food operations.' Their goods are produced in domestic kitchens, or customized buildings on the farm site. Generally, cottage food products do not require temperature control for safety.

When local food producers organize 'cottage food operations' their profits are relatively low--less than \$15,000 a year. However, few farmers make the effort to do so because of regulatory barriers in the state's food production and distribution laws. According to committee testimony, setting-up a commercial kitchen to produce jams and jellies for

local sale can cost as much as \$30,000--an amount that meets requirements for commercial sized ovens, compartmentalized sinks, plumbing, industrial appliances such as refrigerators, separated storage areas, water testing, handicapper accessibility, local health department inspections, and state licensure.

In order to encourage local farm markets throughout Michigan and remove legal barriers to growth in local farm economies, legislation has been introduced to exempt 'cottage food operations' and the producers of honey and maple syrup from the licensing provisions of the state food law, under certain circumstances.

### ***THE CONTENT OF THE BILLS:***

The bills would exempt "cottage food operations", and also both retail outlets and processing facilities for honey and maple syrup from the licensing provisions of the Food Law of 2000, if they have annual gross sales of \$15,000 or less.

House Bills 5280 and 5837 are tie-barred so that neither could go into effect unless both are enacted into law. Further, House Bill 5843 is tie-barred to House Bills 5280 and 5837 so that it could not go into effect unless those bills are enacted into law. A more detailed description of each bill follows.

**House Bill 5837 (H-1)** would amend the Food Law of 2000 (MCL 289.1105) to add three definitions: cottage food operation; cottage food product; and domestic residence. The bill defines a "*cottage food operation*" as a person who produces or packages cottage food products only in a kitchen of that person's primary domestic residences within this state.

A "*cottage food product*" is defined to mean a food that is not potentially hazardous food as that term is defined in the Food Code. Examples of cottage food product include, but are 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. The term does not include all potentially hazardous food regulated under 21 CFR 113 and 114, example of which include, 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 low-acid fruits or acidified vegetables and other canned foods except for jams, jellies, and preserves as defined in 21 CFR 150.

"*Domestic residence*" is defined to mean a single-family dwelling or an area within a rental unit where a single person or family actually resides. Domestic residence does not include either of the following: a group or communal residential setting within any type of structure or an outbuilding, shed, barn, or other similar structure.

**House Bill 5280 (H-2)** would amend the Food Law of 2000 (MCL 289.4101) to set standards for cottage food operations.

House Bill 5280 (H-2) provides that a cottage food operation is exempt from the licensing and evaluation provisions of the Food Law. However, the bill specifies that this exemption

does not include an exemption from the adulteration and other standards imposed by the act. Neither would it limit the ability of the Department of Agriculture to take appropriate enforcement action for violations described in Section 5101. The bill specifies that this subsection would not require a cottage food operation to meet the standards contained in 21 CFR 110 or the 2005 Federal Food Code, or both.

The bill requires that cottage food products be pre-packaged and properly labeled prior to sale. At a minimum, a cottage food operation would be required to place on the label of any food it produced or packaged the following information:

- The name and address of the business of the cottage food operation.
- The name of the cottage food product.
- The ingredients of the cottage food product, in descending order of predominance by weight.
- The net weight or net volume of the cottage food product.
- Allergen labeling as specified by federal labeling requirements.
- If any nutritional claim is made, appropriate labeling as specified by federal labeling requirements.
- The following statement printed in at least the equivalent of 11-point font size in a color that provides a clear contrast to the background: "Made in a home kitchen that has not been inspected by the Michigan Department of Agriculture."

Sales locations. Cottage food products may be sold directly from the cottage food operation to the consumer only, and not by internet or mail order. Sales by consignment or at wholesale are prohibited.

Gross sales. To qualify for the exemption, the cottage food operation could not have gross sales of cottage food products of more than \$15,000 annually. House Bill 5280 (H-2) specifies that the determination of the \$15,000 annual gross sales would be computed on the basis of the amount of gross sales within or at a particular domestic residence and would not be computed on a per-person basis within or at that domestic residence. Further, the Department of Agriculture could make a written request for documentation to verify the operation's gross sales.

Storage. The bill requires that cottage food products be stored only in the primary domestic residence.

Finally, the bill specifies that an exemption under this section would not affect the application of any other state or federal laws or any applicable ordinances enacted by any local unit of government.

**House Bill 5843** would amend the Food Law of 2000 (MCL 289.4105) to provide an exemption from the licensing requirements of the Food Law to both retail outlets and processing facilities for producers with gross sales of \$15,000 or less of honey or maple syrup. However, the bill provides that in these cases, the honey and maple syrup would

need labeling substantially similar to that for cottage food products, as described in Section 4102(3) of the law.

Currently under the law, there is an exemption for retail outlets that sell prepackaged honey or maple syrup produced in Michigan if the outlet is operated by the producer and the processing facility is licensed under the act.

***BACKGROUND INFORMATION:***

House Bill 5843 is similar to House Bill 6657 from the 2007-2008 legislative session, a bill sponsored by Rep. Andy Meisner that passed the House on December 4, 2008.

***ARGUMENTS:***

***For:***

Proponents of the legislation, such as the Michigan Organic Food and Farm Alliance, note that "entrepreneurial agricultural enterprises are becoming more and more vital to the survival of small and medium scale farms." They say, "Many farms face the choice of creating new 'value-added' products and finding niche markets, or of selling the farm, sometimes after many generations of farming." The Alliance continues: "The Cottage Food Bills will allow farmers and food entrepreneurs to test new products without the large and sometimes prohibitive expense of setting up a certified commercial kitchen. This will drastically lower the risk in developing new products that have the potential to help keep a farm profitable."

Those who favor these bills say they allow all citizens to support Michigan in four ways: First, the bills promote Michigan agriculture by utilizing the products of Michigan farmers; second, they support Michigan tourism by supplying fresh Michigan products to visitors; third, they support the Michigan economy by encouraging locals and visitors to 'Buy Michigan' in a wide range of products; and fourth, they support Michigan households, by providing them with healthy and delicious Michigan goods.

***Against:***

Opponents of the legislation note that while the bills lower the financial risk in developing new products by the local entrepreneurs who work small and medium scale farms, the legislation does pose the possibility of increasing the risk in the incidence of food-borne illness that comes of products made in uncertified kitchens.

***Response:***

A workgroup made up of representatives from small farms and the Michigan Department of Agriculture has modified the bills to better ensure food safety. Among the protections contained in the substitute versions of the bills are: a cap on the total amount of annual sales; the requirement that foods be properly labeled; an explicit list that limits the kinds of foods that can be sold, excluding those most prone to carrying food-borne illness; and the assurance that the Department of Agriculture's ability to take appropriate enforcement actions is not limited.

In sum, these bills strike a balance: they acknowledge the importance of food safety, while better enabling small entrepreneurs to sell the products they produce locally.

***POSITIONS:***

The Michigan Department of Agriculture supports the bills. (6-9-10)

The Michigan Farmers Market Association supports House Bill 5280 as substituted. (6-9-10)

The Michigan Organic Food and Farm Alliance supports House Bills 5280 and 5837. (6-9-10)

Michigan Food and Farming Systems supports House Bills 5834 and 5820. (6-9-10)

The Michigan Farm Bureau supports the bills in concept. (6-9-10)

Growing Hope of Ypsilanti supports House Bills 5837 and 5280. (5-5-10)

The Greening of Detroit supports House Bills 5837 and 5280. (5-5-10)

St. Joseph Farmers Market supports House Bill 5280. (5-5-10)

The Center for Economic Security supports the bills. (5-5-10)

The Michigan Environmental Council supports the bills. (5-5-10)

The Bee Keepers support House Bill 5843. (5-5-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.