

**SUBSTITUTE FOR
HOUSE BILL NO. 5837**

A bill to amend 2000 PA 92, entitled
"Food law of 2000,"
by amending section 1105 (MCL 289.1105), as amended by 2008 PA 338.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1105. 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 poisonous or deleterious substance
5 that may render it injurious to health except that, if the
6 substance is not an added substance, the food is not considered
7 adulterated if the quantity of that substance in the food does not

1 ordinarily render it injurious to health.

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

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

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

23 (v) Any added poisonous or deleterious substance, any food
24 additive, and pesticide chemical in or on a raw agricultural
25 commodity, or any color additive is considered unsafe for the
26 purpose of application of this definition, unless there is in
27 effect a federal regulation or exemption from regulation under the

1 federal act, meat inspection act, poultry product inspection act,
2 or other federal acts, or a rule adopted under this act limiting
3 the quantity of the substance, and the use or intended use of the
4 substance, and the use or intended use of the substance conforms to
5 the terms prescribed by the rule.

6 (vi) It is or contains a new animal drug or conversion product
7 of a new animal drug that is unsafe within the meaning of section
8 360b of the federal act, 21 USC 360b.

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

12 (viii) It has been produced, prepared, packed, or held under
13 insanitary conditions in which it may have become contaminated with
14 filth or in which it may have been rendered diseased, unwholesome,
15 or injurious to health.

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

19 (x) Its container is composed, in whole or in part, of any
20 poisonous or deleterious substance that may render the contents
21 injurious to health.

22 (xi) A valuable constituent has been in whole or in part
23 omitted or abstracted from the food; a substance has been
24 substituted wholly or in part for the food; damage or inferiority
25 has been concealed in any manner; or a substance has been added to
26 the food or mixed or packed with the food so as to increase its
27 bulk or weight, reduce its quality or strength, or make it appear

1 better or of greater value than it is.

2 (xii) It is confectionery and has partially or completely
3 imbedded in it any nonnutritive object except in the case of any
4 nonnutritive object if, as provided by rules, the object is of
5 practical functional value to the confectionery product and would
6 not render the product injurious or hazardous to health; it bears
7 or contains any alcohol other than alcohol not in excess of 1/2 of
8 1% by volume derived solely from the use of flavoring extracts; or
9 it bears or contains any nonnutritive substance except a
10 nonnutritive substance such as harmless coloring, harmless
11 flavoring, harmless resinous glaze not in excess of 4/10 of 1%,
12 harmless natural wax not in excess of 4/10 of 1%, harmless natural
13 gum and pectin or to any chewing gum by reason of its containing
14 harmless nonnutritive masticatory substances which is in or on
15 confectionery by reason of its use for some practical functional
16 purpose in the manufacture, packaging, or storage of such
17 confectionery if the use of the substance does not promote
18 deception of the consumer or otherwise result in adulteration or
19 misbranding in violation of the provisions of this act. For the
20 purpose of avoiding or resolving uncertainty as to the application
21 of this subdivision, the director may issue rules allowing or
22 prohibiting the use of particular nonnutritive substances.

23 (xiii) It is or bears or contains any color additive that is
24 unsafe within the meaning of subparagraph (v).

25 (xiv) It has been intentionally subjected to radiation, unless
26 the use of the radiation was in conformity with a rule or exemption
27 under this act or a regulation or exemption under the federal act.

1 (xv) It is bottled water that contains a substance at a level
2 higher than allowed under this act.

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

7 (c) "Agricultural use operation" means a maple syrup
8 production facility or similar food establishment that finishes a
9 raw commodity and is integral to the agricultural production of,
10 and is located at, a farm. An agricultural use operation is not
11 considered a food processing plant or retail processing operation
12 for purposes of personal or real property but must meet those same
13 standards and licensing requirements as prescribed in this act.

14 (d) "Bed and breakfast" means a private residence that offers
15 sleeping accommodations to transient tenants in 14 or fewer rooms
16 for rent, is the innkeeper's residence in which the innkeeper
17 resides while renting the rooms to transient tenants, and serves
18 breakfasts, or other meals in the case of a bed and breakfast
19 described in section 1107(n) (ii), at no extra cost to its transient
20 tenants. A bed and breakfast is not considered a food service
21 establishment if exempt under section 1107(n) (ii) or (iii).

22 (e) "Color additive" means a dye, pigment, or other substance
23 made by process of synthesis or similar artifice or extracted,
24 isolated, or otherwise derived, with or without intermediate or
25 final change of identity from a vegetable, animal, mineral, or
26 other source, or when added or applied to a food or any part of a
27 food is capable alone or through reaction with other substance of

1 imparting color to the food. Color additive does not include any
2 material that is exempt or hereafter is exempted under the federal
3 act. This subdivision does not apply to any pesticide chemical,
4 soil or plant nutrient, or other agricultural chemical solely
5 because of its effect in aiding, retarding, or otherwise affecting,
6 directly or indirectly, the growth of other natural physiological
7 process of produce of the soil and thereby affecting its color,
8 whether before or after harvest. Color includes black, white, and
9 intermediate grays.

10 (f) "Contaminated with filth" means contamination applicable
11 to any food not securely protected from dust, dirt, and, as far as
12 may be necessary by all reasonable means, from all foreign or
13 injurious contaminations.

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

18 (H) "COTTAGE FOOD OPERATION" MEANS A PERSON WHO PRODUCES OR
19 PACKAGES COTTAGE FOOD PRODUCTS ONLY IN A KITCHEN OF THAT PERSON'S
20 PRIMARY DOMESTIC RESIDENCE WITHIN THIS STATE.

21 (I) "COTTAGE FOOD PRODUCT" MEANS A FOOD THAT IS NOT
22 POTENTIALLY HAZARDOUS FOOD AS THAT TERM IS DEFINED IN THE FOOD
23 CODE. EXAMPLES OF COTTAGE FOOD PRODUCT INCLUDE, BUT ARE NOT LIMITED
24 TO, JAMS, JELLIES, DRIED FRUIT, CANDY, CEREAL, GRANOLA, DRY MIXES,
25 VINEGAR, DRIED HERBS, AND BAKED GOODS THAT DO NOT REQUIRE
26 TEMPERATURE CONTROL FOR SAFETY. COTTAGE FOOD PRODUCT DOES NOT
27 INCLUDE ALL POTENTIALLY HAZARDOUS FOOD REGULATED UNDER 21 CFR 113

1 AND 114, EXAMPLES OF WHICH INCLUDE, BUT ARE NOT LIMITED TO, MEAT
2 AND POULTRY PRODUCTS; SALSA; MILK PRODUCTS; BOTTLED WATER AND OTHER
3 BEVERAGES; AND HOME-PRODUCED ICE PRODUCTS. COTTAGE FOOD PRODUCT
4 ALSO DOES NOT INCLUDE CANNED LOW-ACID FRUITS OR ACIDIFIED
5 VEGETABLES AND OTHER CANNED FOODS EXCEPT FOR JAMS, JELLIES, AND
6 PRESERVES AS DEFINED IN 21 CFR 150.

7 (J) ~~(h)~~—"Critical violation" or "critical item" means a
8 violation of the food code that the director determines is more
9 likely than other violations to contribute to food contamination,
10 illness to humans, or environmental health hazard.

11 (K) "DOMESTIC RESIDENCE" MEANS A SINGLE-FAMILY DWELLING OR AN
12 AREA WITHIN A RENTAL UNIT WHERE A SINGLE PERSON OR FAMILY ACTUALLY
13 RESIDES. DOMESTIC RESIDENCE DOES NOT INCLUDE EITHER OF THE
14 FOLLOWING:

15 (i) A GROUP OR COMMUNAL RESIDENTIAL SETTING WITHIN ANY TYPE OF
16 STRUCTURE.

17 (ii) AN OUTBUILDING, SHED, BARN, OR OTHER SIMILAR STRUCTURE.

18 Enacting section 1. This amendatory act does not take effect
19 unless House Bill No. 5280 of the 95th Legislature is enacted into
20 law.