

# HOUSE BILL No. 5280

August 26, 2009, Introduced by Reps. Proos, Marleau, McMillin, Caul, Opsommer, Calley, Lori, Pearce, Ball, Green, Booher, Walsh, Crawford, Stamas, Hansen, Rocca, Schuitmaker, Meekhof, Elsenheimer, Hildenbrand, Denby, Lund, Pavlov, Wayne Schmidt, Kurtz, Tyler, Clemente, Genetski, Bolger, Kowall, Sheltroun, Mayes, Moss and Horn and referred to the Committee on Agriculture.

A bill to amend 2000 PA 92, entitled "Food law of 2000," by amending sections 1105 and 1109 (MCL 289.1105 and 289.1109), section 1105 as amended by 2008 PA 338 and section 1109 as amended by 2007 PA 113, and by adding section 4102.

**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 NON-POTENTIALLY HAZARDOUS FOOD IN A KITCHEN OF THAT**  
20 **PERSON'S PRIMARY DOMESTIC RESIDENCE.**

21 (I) ~~(h)~~—"Critical violation" or "critical item" means a  
22 violation of the food code that the director determines is more  
23 likely than other violations to contribute to food contamination,  
24 illness to humans, or environmental health hazard.

25 Sec. 1109. As used in this act:

26 (a) "Imminent or substantial hazard" means a condition at a  
27 food establishment that the director determines requires immediate

1 action to prevent endangering the health of people.

2 (b) "Inspection" means the checking or testing of observable  
3 practices against standards established in or adopted by this act,  
4 accompanied by a report of findings.

5 (c) "Juice" means the aqueous liquid expressed or extracted  
6 from 1 or more fruits or vegetables, purees of the edible portions  
7 of 1 or more fruits or vegetables, or any concentrates of such  
8 liquid or puree.

9 (d) "Label" means a display of written, printed, or graphic  
10 matter upon the immediate container of any article and includes a  
11 requirement imposed under this act that any word, statement, or  
12 other information appearing on the display also appear on the  
13 outside container or wrapper of the retail package of the article  
14 or be easily legible through the outside container or wrapper.

15 (e) "Labeling" means all labels and other written, printed, or  
16 graphic matter upon an article, any of its containers or wrappers,  
17 or accompanying the article.

18 (f) "License limitation" means an action by which the director  
19 imposes restrictions or conditions, or both, on a license of a food  
20 establishment.

21 (g) "License holder" means the entity that is legally  
22 responsible for the operation of the food establishment including  
23 the owner, the owner's agent, or other person operating under  
24 apparent authority of the owner possessing a valid license to  
25 operate a food establishment.

26 (h) "Limited wholesale food processor" means a wholesale food  
27 processor that has \$25,000.00 or less in annual gross wholesale

1 sales made or business done in wholesale sales in the preceding  
2 licensing year, or \$25,000.00 or less of the food is reasonably  
3 anticipated to be sold for the current licensing year. Only the  
4 food sales from the wholesale food processor operation are used in  
5 computing the annual gross sales under this subdivision.

6 (i) "Local health department" means that term as defined in  
7 section 1105 of the public health code, MCL 333.1105, and having  
8 those powers and duties as described in part 24 of the public  
9 health code, MCL 333.2401 to 333.2498.

10 (j) "Milk product" means cream, light cream, light whipping  
11 cream, heavy cream, heavy whipping cream, whipped cream, whipped  
12 light cream, sour cream, acidified sour cream, cultured sour cream,  
13 half-and-half, sour half-and-half, acidified sour half-and-half,  
14 cultured sour half-and-half, reconstituted or recombined milk and  
15 milk products, concentrated milk, concentrated milk products, skim  
16 milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk,  
17 cultured milk, cultured lowfat milk, cultured skim milk, yogurt,  
18 lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat  
19 milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk,  
20 low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat  
21 milk, lactose-reduced skim milk, aseptically processed and packaged  
22 milk, milk products with added safe and suitable microbial  
23 organisms, and any other milk product made by the addition or  
24 subtraction of milkfat or addition of safe and suitable optional  
25 ingredients for protein, vitamin, or mineral fortification. Milk  
26 product does include dietary dairy products, dairy-based infant  
27 formula, ice cream and other frozen desserts, cheese, butter, and



1 any other product derived from milk.

2 (k) "Misbranded" means food to which any of the following  
3 apply:

4 (i) Its labeling is false or misleading in any particular.

5 (ii) It is offered for sale under the name of another food.

6 (iii) It is an imitation of another food unless its label bears,  
7 in type of uniform size and prominence, the word "imitation" and  
8 immediately thereafter the name of the food imitated.

9 (iv) Its container is so made, formed, or filled as to be  
10 misleading.

11 (v) It is in package form, unless it bears a label containing  
12 both the name and place of business of the manufacturer, packer, or  
13 distributor and an accurate statement of the quantity of the  
14 contents in terms of weight, measure, or numerical count subject to  
15 reasonable variations as are permitted and exemptions as to small  
16 packages as are established by rules prescribed by the department.

17 (vi) Any word, statement, or other labeling required by this  
18 act is not prominently placed on the label or labeling  
19 conspicuously and in such terms as to render it likely to be read  
20 and understood by the ordinary individual under customary  
21 conditions of purchase and use.

22 (vii) It purports to be or is represented as a food for which a  
23 definition and standard of identity have been prescribed by rules  
24 as provided by this act or under the federal act, unless it  
25 conforms to such definition and standard and its label bears the  
26 name of the food specified in the definition and standard, and,  
27 insofar as may be required by the rules, the common names of

1 optional ingredients, other than spices, flavoring, and coloring,  
2 present in such food.

3 (viii) It purports to be or is represented to be either of the  
4 following:

5 (A) A food for which a standard of quality has been prescribed  
6 by this act or rules and its quality falls below such standard  
7 unless its label bears, in such manner and form as such rules  
8 specify, a statement that it falls below such standard.

9 (B) A food for which a standard or standards of fill of  
10 container have been prescribed by this act or rules and it falls  
11 below the standard of fill of container applicable, unless its  
12 label bears, in such manner and form as the rules specify, a  
13 statement that it falls below the standard.

14 (ix) It does not bear labeling clearly giving the common or  
15 usual name of the food, if one exists, and if fabricated from 2 or  
16 more ingredients, the common or usual name of each ingredient  
17 except that spices, flavorings, and colorings, other than those  
18 sold as such, may be designated as spices, flavorings, and  
19 colorings, without naming each and under other circumstances as  
20 established by rules regarding exemptions based upon practicality,  
21 potential deception, or unfair competition.

22 (x) It bears or contains any artificial flavoring, artificial  
23 coloring, or chemical preservative unless the labeling states that  
24 fact and under other circumstances as established by rules  
25 regarding exemptions based upon practicality.

26 (xi) If a food intended for human consumption and offered for  
27 sale, its label and labeling do not bear the nutrition information

1 required under section 403(q) of the federal act, 21 USC 343.

2 (xii) It is a product intended as an ingredient of another food  
3 and, when used according to the directions of the purveyor, will  
4 result in the final food product being adulterated or misbranded.

5 (xiii) It is a color additive whose packaging and labeling are  
6 not in conformity with packaging and labeling requirements  
7 applicable to such color additive prescribed under the provisions  
8 of the federal act.

9 (l) "Mobile food establishment" means a food establishment  
10 operating from a vehicle or watercraft that returns to a licensed  
11 commissary for servicing and maintenance at least once every 24  
12 hours.

13 (m) "Mobile food establishment commissary" means an operation  
14 that is capable of servicing a mobile food establishment.

15 (N) **"NON-POTENTIALLY HAZARDOUS FOOD" MEANS A FOOD THAT IS NOT**  
16 **POTENTIALLY HAZARDOUS FOOD AS THAT TERM AS DEFINED IN THE FOOD**  
17 **CODE, WHICH INCLUDES, BUT IS NOT LIMITED TO, BAKED GOODS, JAMS,**  
18 **JELLIES, CANDY, SNACK FOOD, CEREAL, GRANOLA, DRY MIXES, VINEGAR,**  
19 **AND DRIED HERBS. NON-POTENTIALLY HAZARDOUS FOOD DOES NOT INCLUDE**  
20 **HOME-CANNED LOW-ACID OR ACIDIFIED VEGETABLES, HOME-CANNED SALSA, OR**  
21 **HOME-CANNED FOOD; FOOD SERVICE ITEMS; READY-TO-EAT MEALS, MEAT,**  
22 **SANDWICHES, CHEESE, OR CUSTARD PIES; GARLIC IN OIL; FOOD THAT**  
23 **REQUIRES TEMPERATURE CONTROL FOR SAFETY; AND BOTTLED WATER, HOME-**  
24 **PRODUCED ICE PRODUCTS, AND OTHER BEVERAGES AND PRODUCTS.**

25 (O) ~~(n)~~—"Person" means an individual, sole proprietorship,  
26 partnership, corporation, association, or other legal entity.

27 (P) ~~(e)~~—"Pesticide chemical" means any substance that, alone,

1 in chemical combination, or in formulation with 1 or more other  
2 substances, is a pesticide within the meaning of the federal  
3 insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and  
4 is used in the production, storage, or transportation of raw  
5 agricultural commodities.

6 (Q) ~~(p)~~—"Principal display panel" means that part of a label  
7 that is most likely to be displayed, presented, shown, or examined  
8 under normal and customary conditions of display for retail sale.

9 (R) ~~(q)~~—"Public health code" means 1978 PA 368, MCL 333.1101  
10 to 333.25211.

11 SEC. 4102. (1) A COTTAGE FOOD OPERATION IS EXEMPT FROM THE  
12 LICENSING AND INSPECTION PROVISIONS OF THIS ACT. THIS EXEMPTION  
13 DOES NOT INCLUDE AN EXEMPTION FROM THE LABELING, ADULTERATION, AND  
14 OTHER STANDARDS IMPOSED IN THIS SECTION OR UNDER THIS ACT, OR BOTH.

15 (2) IN ADDITION TO THE OTHER LABELING AND DISCLOSURE  
16 REQUIREMENTS IMPOSED BY THIS ACT, A COTTAGE FOOD OPERATION SHALL  
17 PLACE ON THE LABEL OF ANY FOOD IT PRODUCES OR PACKAGES A STATEMENT  
18 THAT SUBSTANTIALLY COMPLIES WITH THE FOLLOWING:

19 "MADE IN A HOME KITCHEN THAT HAS NOT BEEN INSPECTED BY THE  
20 MICHIGAN DEPARTMENT OF AGRICULTURE."

21 (3) THE PERMISSIBLE SALE LOCATION OF NON-POTENTIALLY HAZARDOUS  
22 FOOD BY A COTTAGE FOOD OPERATION IS LIMITED TO HOMES, FARM MARKETS,  
23 OR ROADSIDE STANDS; MUNICIPAL FARMERS MARKETS; COUNTY FAIRS; AND  
24 TOWN CELEBRATIONS, FESTIVALS, AND EVENTS. A COTTAGE FOOD OPERATION  
25 CLAIMING AN EXEMPTION FROM LICENSURE UNDER THIS SECTION IS NOT  
26 ALLOWED TO SELL NON-POTENTIALLY HAZARDOUS FOOD AT CRAFT SHOWS, FLEA  
27 MARKETS, OR OTHER FOR-PROFIT EVENTS; BY MEANS OF THE INTERNET OR

1 OTHER MEDIA INSIDE OR OUTSIDE THIS STATE; AT PERMANENT SALES VENUES  
2 OTHER THAN FARMERS MARKETS, HOMES, OR ROADSIDE STANDS; OR BY MEANS  
3 OF CONSIGNMENT OR IN OTHER LICENSED RETAIL ESTABLISHMENTS.

4 (4) THE GROSS SALES OF NON-POTENTIALLY HAZARDOUS FOOD SHALL  
5 NOT EXCEED \$15,000.00 ANNUALLY. THE DEPARTMENT MAY REQUEST IN  
6 WRITING DOCUMENTATION TO VERIFY THE GROSS SALES FIGURE.

7 (5) AN EXEMPTION UNDER THIS SECTION DOES NOT AFFECT THE  
8 APPLICATION OF ANY OTHER STATE OR FEDERAL LAWS OR ANY APPLICABLE  
9 ORDINANCES ENACTED BY ANY LOCAL UNIT OF GOVERNMENT.