

SENATE BILL No. 1403

June 23, 2010, Introduced by Senator BROWN and referred to the Committee on Agriculture and Bioeconomy.

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
8 ordinarily render it injurious to health.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (xv) It is bottled water that contains a substance at a level

1 higher than allowed under this act.

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

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

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

21 (e) "Color additive" means a dye, pigment, or other substance
22 made by process of synthesis or similar artifice or extracted,
23 isolated, or otherwise derived, with or without intermediate or
24 final change of identity from a vegetable, animal, mineral, or
25 other source, or when added or applied to a food or any part of a
26 food is capable alone or through reaction with other substance of
27 imparting color to the food. Color additive does not include any

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

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

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

17 **(H) "COTTAGE FOOD OPERATION" MEANS A PERSON WHO PRODUCES OR**
18 **PACKAGES NON-POTENTIALLY HAZARDOUS FOOD IN A KITCHEN OF THAT**
19 **PERSON'S PRIMARY DOMESTIC RESIDENCE.**

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

24 Sec. 1109. As used in this act:

25 (a) "Imminent or substantial hazard" means a condition at a
26 food establishment that the director determines requires immediate
27 action to prevent endangering the health of people.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 present in such food.

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

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

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

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

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

25 (xi) If a food intended for human consumption and offered for
26 sale, its label and labeling do not bear the nutrition information
27 required under section 403(q) of the federal act, 21 USC 343.

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

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

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

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

14 (N) "NON-POTENTIALLY HAZARDOUS FOOD" MEANS THAT TERM AS
15 DEFINED IN THE FOOD CODE, WHICH INCLUDES, BUT IS NOT LIMITED TO,
16 HONEY, BAKED GOODS AND COOKIES, JAMS, PRESERVES, JELLIES, HARD
17 CANDY, BREADS, SNACK FOOD, CEREAL, GRANOLA, DRY FRUIT AND MIXES,
18 VINEGAR, FRUIT PIES, GRAINS, HOT COFFEE OR TEA, MAPLE SYRUP,
19 MUFFINS, WEDDING OR BIRTHDAY CAKE, NON-EGG NOODLES, PEANUT BRITTLE,
20 POPCORN, ROASTED NUTS, SPICES, SUNFLOWER SEEDS, TOFFEE, WASHED
21 FRUITS AND VEGETABLES, WINE VINEGAR, SAMPLES OF FRESH-CUT FRUIT AND
22 VEGETABLES, AND DRIED HERBS. NON-POTENTIALLY HAZARDOUS FOOD DOES
23 NOT INCLUDE HOME-CANNED LOW-ACID OR ACIDIFIED VEGETABLES, HOME-
24 CANNED SALSA, OR HOME-CANNED FOOD; FOOD SERVICE ITEMS; READY-TO-EAT
25 MEALS, MEAT, SANDWICHES, CHEESE, OR CUSTARD PIES; GARLIC IN OIL;
26 FOOD THAT REQUIRES TEMPERATURE CONTROL FOR SAFETY; AND BOTTLED
27 WATER, HOME-PRODUCED ICE PRODUCTS, AND OTHER BEVERAGES AND

1 **PRODUCTS.**

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

4 (P) ~~(e)~~—"Pesticide chemical" means any substance that, alone,
5 in chemical combination, or in formulation with 1 or more other
6 substances, is a pesticide within the meaning of the federal
7 insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and
8 is used in the production, storage, or transportation of raw
9 agricultural commodities.

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

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

15 **SEC. 4102. (1) A COTTAGE FOOD OPERATION IS EXEMPT FROM THE**
16 **LICENSING PROVISIONS OF THIS ACT BUT MAY BE INSPECTED BY THE**
17 **DEPARTMENT. THIS EXEMPTION DOES NOT INCLUDE AN EXEMPTION FROM THE**
18 **LABELING, ADULTERATION, AND OTHER STANDARDS IMPOSED IN THIS SECTION**
19 **OR UNDER THIS ACT, OR BOTH. A PERSON OTHER THAN THE COTTAGE FOOD**
20 **OPERATION SHALL NOT RELABEL OR REPACKAGE ANY ITEM PRODUCED BY THE**
21 **COTTAGE FOOD OPERATION.**

22 (2) **THE LABEL OF ANY FOOD OFFERED FOR SALE BY A COTTAGE FOOD**
23 **OPERATION SHALL STATE THE COMPLETE NAME AND ADDRESS OF THE COTTAGE**
24 **FOOD OPERATION; THE COMMON NAME OF THE FOOD; THE DATE OF**
25 **PRODUCTION; A TRACEABLE LOT NUMBER; A COMPLETE LIST OF THE**
26 **INGREDIENTS IN DESCENDING ORDER BY WEIGHT; AND THE NET WEIGHT OR**
27 **VOLUME. IN ADDITION TO THE OTHER LABELING AND DISCLOSURE**

1 REQUIREMENTS IMPOSED BY THIS ACT OR BY THIS SECTION, A COTTAGE FOOD
2 OPERATION SHALL PLACE ON THE LABEL OF ANY FOOD IT PRODUCES OR
3 PACKAGES A STATEMENT THAT SUBSTANTIALLY COMPLIES WITH THE
4 FOLLOWING:

5 "MADE IN A HOME KITCHEN THAT IS NOT LICENSED BY THE MICHIGAN
6 DEPARTMENT OF AGRICULTURE."

7 (3) ANY SALES OF NON-POTENTIALLY HAZARDOUS FOOD BY A COTTAGE
8 FOOD OPERATION SHALL BE IN THE ORIGINAL PACKAGE AND LABELING. THE
9 PERMISSIBLE LOCATION FOR THE SALE, BY THE COTTAGE FOOD OPERATION,
10 OF NON-POTENTIALLY HAZARDOUS FOOD PRODUCED BY THAT COTTAGE FOOD
11 OPERATION, SUBJECT TO THE REQUIREMENT OF BEING CERTIFIED BY THE
12 DEPARTMENT UNDER SUBSECTION (5), INCLUDES HOMES, FARM MARKETS, OR
13 ROADSIDE STANDS; MUNICIPAL FARMERS MARKETS; COUNTY FAIRS; AND TOWN
14 CELEBRATIONS, FESTIVALS, AND EVENTS. A CERTIFIED COTTAGE FOOD
15 OPERATION MAY ALSO ARRANGE FOR THE SALE OF ITS PRODUCTS BY MAIL OR
16 INTERNET AND RESALE TO COOPERATIVES OR ON CONSIGNMENT TO AN
17 INDIVIDUAL GROCERY STORE.

18 (4) A COTTAGE FOOD OPERATION'S GROSS SALES OF NON-POTENTIALLY
19 HAZARDOUS FOOD SHALL NOT EXCEED \$30,000.00 ANNUALLY. THE DEPARTMENT
20 MAY REQUEST IN WRITING DOCUMENTATION TO VERIFY THE GROSS SALES
21 FIGURE.

22 (5) TO APPLY AND QUALIFY FOR AN EXEMPTION FROM THE LICENSING
23 PROVISIONS OF THIS ACT PURSUANT TO THIS SECTION, THE PERSON SEEKING
24 LICENSURE EXEMPTION SHALL SUCCESSFULLY COMPLETE A BASIC FOOD SAFETY
25 TRAINING PROGRAM OFFERED BY, OR APPROVED BY, THE DEPARTMENT. UPON
26 SUCCESSFUL COMPLETION OF THE PROGRAM, THE PERSON SHALL OFFER PROOF
27 OF COMPLETION OF THE PROGRAM AND APPLY TO THE DEPARTMENT FOR A

1 CERTIFICATION NUMBER. UPON FULFILLMENT OF THOSE REQUIREMENTS AND
2 PROPER APPLICATION, THE DEPARTMENT SHALL ISSUE A CERTIFICATION
3 NUMBER. AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING, THE
4 DEPARTMENT MAY REVOKE A CERTIFICATION IF IT DETERMINES THIS ACT OR
5 THIS SECTION WAS VIOLATED. AN EXEMPTION UNDER THIS SECTION DOES NOT
6 AFFECT THE APPLICATION OF ANY OTHER STATE OR FEDERAL LAWS OR ANY
7 APPLICABLE ORDINANCES ENACTED BY ANY LOCAL UNIT OF GOVERNMENT.