

# HOUSE BILL NO. 5058

June 17, 2021, Introduced by Reps. Clements, Outman, Mueller, O'Malley and Posthumus and referred to the Committee on Regulatory Reform.

A bill to amend 2000 PA 92, entitled  
"Food law,"  
by amending section 1105 (MCL 289.1105), as amended by 2014 PA 516.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 1105. (1) As used in this act:  
2           (a) "Adulterated" means ~~feed to which~~ any of the following  
3 ~~apply~~: **as applied to food:**  
4           (i) It bears or contains ~~any~~ **an added** poisonous or **added**  
5 deleterious substance that may render it injurious to health unless

1 ~~the substance is not an added substance and~~ the quantity of that  
2 substance in the food does not ordinarily render it injurious to  
3 health.

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

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

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

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

28 (vi) It consists in whole or in part of a diseased,  
29 contaminated, filthy, putrid, or decomposed substance or it is

1 otherwise unfit for food.

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

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

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

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

19 (xi) It is confectionery and ~~has~~ **is** partially or completely  
20 imbedded ~~in it any~~ **with a** nonnutritive object except if, as  
21 provided by rules, the object is of practical functional value to  
22 the confectionery product and would not render the product  
23 injurious or hazardous to health; it is confectionery and bears or  
24 contains any alcohol other than alcohol not in excess of ~~1/2 of 1%~~  
25 **0.5%** by volume derived solely from the use of flavoring extracts;  
26 or it is confectionery and bears or contains ~~any a~~ nonnutritive  
27 substance except a nonnutritive substance such as harmless  
28 coloring, harmless flavoring, harmless resinous glaze not in excess  
29 of ~~4/10 of 1%, 0.4%~~, harmless natural wax not in excess of ~~4/10 of~~

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

12 (xii) It is, ~~or~~ bears, or contains ~~any~~**a** 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~~ **non-potentially hazardous** food such as a  
 7 roll, pastry or doughnut, fruit juice, or hot beverage, but may  
 8 also include individual portions of milk and other items incidental  
 9 to those foods.

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

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

17 (ii) ~~(B)~~ The requirements of ~~section~~ **sections** 2129(2) and  
 18 6152(1).

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

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

1           (i) **A** potentially hazardous food regulated under 21 CFR parts  
2 113 and 114 ~~, examples of which include, including,~~ but are not  
3 limited to, meat and poultry products, ~~÷~~salsa, ~~÷~~milk products, ~~÷~~  
4 bottled water and other beverages, ~~÷~~and home-produced ice  
5 products. ~~Cottage food product also does not include canned~~

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

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

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

20           (3) **A food is not adulterated solely because the food contains**  
21 **or has added to it any quantity of industrial hemp. As used in this**  
22 **subsection, "industrial hemp" means that term as defined in section**  
23 **7106 of the public health code, MCL 333.7106.**