Legislative Analysis

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COTTAGE FOOD PRODUCTS AND OPERATIONS

House Bill 5671 (proposed substitute H-1)
Sponsor: Rep. Julie Alexander

House Bill 5704 (proposed substitute H-1)
Sponsor: Rep. Annette Glenn

House Bill 5705 (proposed substitute H-1)
Sponsor: Rep. Tommy Brann

Committee: Agriculture
Complete to 2-16-22

SUMMARY:

House Bills 5671, 5704, and 5705 would amend provisions of the Food Law related to cottage food products and operations. House Bills 5671 and 5704 would allow a cottage food product to be sold by internet or mail order or be delivered by a third-party food delivery platform under certain conditions. The bills also would increase the annual sales that a cottage food operation can have. House Bill 5704 would allow a cottage food operation to register with the Department of Agriculture and Rural Development (MDARD) and use its registration number instead of a business name on its product labels. House Bill 5705 would add personnel certification requirements for third-party food delivery platforms operating in Michigan.

House Bills 5671 and 5704 are nearly identical. House Bill 5704 includes all of the changes proposed by HB 5671 and then has additional provisions related to the registration of cottage food operations. Both bills would allow a ***cottage food product*** to be sold by internet or mail order or be delivered by a food delivery service under certain conditions and would increase the annual sales that a ***cottage food operation*** can have. (The bills would measure net sales, rather than gross sales as under current law.)

Cottage food product is defined as a food that is not potentially hazardous food as that term is defined in the food code.[1] Examples of cottage food product include jams, jellies, dried fruit, candy, cereal, granola, dry mixes, vinegar, dried herbs, and baked goods that do not require temperature control for safety. Cottage food does not include any potentially hazardous food regulated under 21 CFR parts 113 and 114, such as meat and poultry products, salsa, milk products, bottled water and other beverages, and home-produced ice products. Cottage food 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 part 150.

Cottage food operation is defined as a person who produces or packages cottage food products only in a kitchen of that person's primary domestic residence in Michigan.

[1] "Food Code, 2009 Recommendations of the United States Public Health Service Food and Drug Administration." https://www.fda.gov/food/fda-food-code/food-code-2009

Currently under the act, cottage food products may only be sold directly from the cottage food operation to the consumer, and specifically not by internet or mail order. The bills would allow internet or mail orders, as well as delivery to a consumer through a *third-party food delivery platform* (defined below), if the cottage food operation provides an opportunity for a consumer to ***directly interact with*** the operation before the product is sold.

> ***Directly interact with*** would include either a face-to-face meeting or a ***virtual meeting***, which would include meetings in which communication occurs electronically in a manner that allows two-way communication so that participants can see or be seen and hear or be heard by all parties to the communication.

Additionally, the act currently limits the gross sales of cottage food products by a cottage food operation to $25,000 annually. The bills instead would limit the *net sales* of cottage food products by a cottage food operation to *$45,000* annually.

House Bill 5704 would further amend the act to allow a cottage food operation to register with MDARD. A cottage food operation that wanted to register with MDARD would have to do so on a form and in a manner prescribed by MDARD. An operation granted a registration could be issued a document that evidences the registration and contains an identifying number unique to that cottage food operation. MDARD could contract with a third party to implement the registration of cottage food operations. Information obtained from the registration process would be exempt from disclosure under the Freedom of Information Act (FOIA). MDARD could not charge a registration fee or any other fee to a cottage food operation.

The act requires a cottage food operation to properly label food products before sale, which currently includes placing the name and address of the business of the cottage food operation on the label. The bill would allow the label to include either the name and address of the business *or the registration number issued for the cottage food operation, as applicable*.

A cottage food operation that was registered with MDARD as described above would have to include the registration number on its product labels, but would not have to include any business name or address. A cottage food operation that was not registered would have to include the name and address of the business on its labels.

MCL 289.4102 (HB 5671)
MCL 289.1105 and 289.4102 (HB 5704)

House Bill 5705 would amend the Food Law to add personnel certification requirements for ***third-party food delivery platforms*** that operate in Michigan and food delivery drivers.

> ***Third-party food delivery platform*** would mean a business engaging in the service of delivery from a cottage food operation or online food ordering and delivery from a food service establishment to a consumer.

Under the bill, a third-party food delivery platform operating in Michigan would have to require any individual who contracts with the platform to be a food delivery driver to have a current certification from a personnel certification program accredited by the American National Standards Institute, utilizing the Conference for Food Protection Standards. Certification would be valid for three years. A food delivery driver who completed the

certification program would have to present proof of certification to any of the following, upon request:

- The manager or owner of a food service establishment.
- A cottage food operation.
- A consumer that receives a food delivery.

An individual who violated the above certification requirements could be ordered to pay a civil fine of not more than $100. A violation could be prosecuted by the prosecutor in the county where the violation occurred or by the attorney general.

MCL 289.1111 and proposed MCL 289.6171

FISCAL IMPACT:

A fiscal analysis of House Bills 5671 and 5704 is in progress.

House Bill 5705 would have an indeterminate fiscal impact on the state and on local units of government. The impact would depend on the number of individuals held responsible for a civil infraction and ordered to pay a fine, and how the cases are prosecuted. The majority of civil infraction revenue would increase funding for public and county law libraries, and a small portion of the revenue would be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. Under the bill, either local prosecutors or the state's attorney general could prosecute the cases. There could be additional costs for the prosecuting entity depending on how caseloads and related administrative costs are affected.

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