

Legislative Analysis



INDUSTRIAL HEMP ADDED TO FOOD OR A DIETARY SUPPLEMENT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5058 (H-1) as reported from committee
Sponsor: Rep. TC Clements

Analysis available at
<http://www.legislature.mi.gov>

House Bills 5060 and 5617 as reported from committee
Sponsor: Rep. Pat Outman

House Bill 5061 (H-2) as reported from committee
Sponsor: Rep. Bryan Posthumus

Committee: Regulatory Reform
Complete to 2-17-22

SUMMARY:

House Bill 5617 would amend the Food Law to provide compliance standards for industrial hemp added to food or a dietary supplement and to provide testing and laboratory requirements for food or a dietary supplement that contains or has added to it any amount of a cannabinoid derived from industrial hemp. House Bills 5058, 5060, and 5061 would amend several acts pertaining to industrial hemp to exclude food and certain products from being considered “adulterated” solely on the basis of containing industrial hemp, limit the liability of growers for violations of the Industrial Hemp Growers Act, and revise or delete defined terms.

House Bill 5617 would require that *industrial hemp* that is added to food or a dietary supplement must comply with the requirements under the Industrial Hemp Growers Act, must comply with 7 USC 1639o to 1639s, or otherwise must comply with the applicable laws of the jurisdiction where the industrial hemp was grown.

Industrial hemp would mean any of the following:

- A plant, or a part of a plant, of the genus *Cannabis*, whether growing or not, with a **THC** concentration of 0.3% or less on a dry-weight basis.
- The seeds of a plant of the genus *Cannabis* with a THC concentration of 0.3% or less on a dry-weight basis.
- If it has a THC concentration of 0.3% or less on a dry-weight basis, a compound, manufacture, salt, derivative, mixture, preparation, extract, cannabinoid, acid, salt, isomer, or salt of an isomer of a plant, or a part of a plant, of the genus *Cannabis*.
- A product to which one of the following applies:
 - If not intended for human or animal consumption, the product meets both of the following requirements:
 - It contains any of the substances described above.
 - It has a THC concentration of 0.3% or less on a dry-weight basis.
 - If intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements:
 - It has a THC concentration of 0.3% or less on a dry-weight or per volume basis.

- It contains a total amount of THC that is less than or equal to the limit established by the Marijuana Regulatory Agency under section 8(1)(n) of the Michigan Regulation and Taxation of Marihuana Act.

THC would mean any of the following:

- Tetrahydrocannabinolic acid.
- Unless excluded by the Marijuana Regulatory Agency under the Michigan Regulation and Taxation of Marihuana Act, a tetrahydrocannabinol, regardless of whether it is artificially or naturally derived.
- A tetrahydrocannabinol that is a structural, optical, or geometric isomer of a tetrahydrocannabinol described in the bulleted item immediately above.

Food and dietary supplements

The bill also would provide that food or a dietary supplement that contains or has added to it any quantity of a cannabinoid derived from industrial hemp may be sold in Michigan only if all of the following requirements are met:

- The food or dietary supplement is tested by an ***independent testing laboratory***.
- The food or dietary supplement is accompanied by a certificate of analysis as described below.
- The food or dietary supplement is labeled as described below.

Independent testing laboratory would mean a laboratory that meets all of the following requirements:

- It does not have a direct or indirect interest in the entity whose product is being tested.
- It does not have a direct or indirect interest in a facility that cultivates, processes, distributes, dispenses, or sells industrial hemp in Michigan or another jurisdiction.
- It does not have a direct or indirect interest in a facility that cultivates, processes, distributes, dispenses, or sells marijuana in Michigan or another jurisdiction.
- It is accredited by a third-party accrediting body as a competent testing laboratory under ISO/IEC 17025 of the International Organization for Standardization.

Certificate of analysis

Under the bill, an independent testing laboratory would have to test food or a dietary supplement that contains or has added to it any amount of a cannabinoid derived from industrial hemp and provide a certificate of analysis that contains test results for all of the following:

- Total delta-9-THC, which would mean the total available tetrahydrocannabinol measured as the sum of delta-9-tetrahydrocannabinol and 87.7% of the delta-9-tetrahydrocannabinol acid reported on a dry weight basis.
- Cannabinoids.
- Pesticides, heavy metals, residual solvents, mycotoxins, or microbiological contaminants that are or may be dangerous to the public health.

Labeling

The bill would require food or a dietary supplement that contains or has added to it any amount of a cannabinoid derived from industrial hemp to have a label that contains all of the following information:

- Serving size.

- If specific cannabinoids are marketed, the number of milligrams of each cannabinoid per serving.
- A scannable bar code, quick response (QR) code, or web address linked to a document or website that provides access to the certificate of analysis described above.

MCL 289.1109 and proposed MCL 289.7136

House Bill 5058 would amend the Food Law to provide that a food or dietary supplement that meets the requirements under House Bill 5617 is not adulterated solely because it contains or has added to it any quantity of industrial hemp-derived cannabinoids. (The term “adulterated” generally refers to a food that bears or contains an added substance listed in the act that renders that food injurious to health or that is considered unsafe.)

MCL 289.1105

House Bill 5059 would amend the Industrial Hemp Growers Act to revise one of the actions a grower (a person who is registered to grow industrial hemp) is prohibited from doing. Currently, a grower may not sell an intermediary, in-process, or finished industrial hemp product or smokable hemp flower unless that grower is also licensed as a processor-handler under the Industrial Hemp Research and Development Act or as a processor under the Medical Marihuana Facilities Licensing Act. The bill would delete “or finished” from this provision so that it would prohibit a grower from selling an intermediary or in-process industrial hemp product or smokable hemp flower without the required license.

MCL 333.29303

House Bill 5060 would amend the Industrial Hemp Growers Act. Currently, a person that violates the act is liable for all damages sustained by a purchaser of a product sold in violation of the act, and a court may order restitution to a party injured by the purchase of a product sold in violation of the act. The bill would revise this provision to limit the liability of a grower. Specifically, under the bill, a purchaser could bring a civil action against a grower if the grower sold industrial hemp in violation of section 303(f), (h), or (j) of the act, and a court could order restitution to a party injured by the purchase of industrial hemp (rather than “a product”) sold in violation of those specific provisions (rather than “the act”).

The referenced provisions of section 303 prohibit a grower from doing the following:

- Section 303(f)—Selling or transporting, or permitting the sale or transport of, viable industrial hemp plants or viable seed.
- Section 303(h)—Selling raw industrial hemp to a person in this state that is not licensed as a processor-handler under the Industrial Hemp Research and Development Act or as a processor under the Medical Marihuana Facilities Licensing Act, as authorized under the act.
- Section 303(j)—Selling an intermediary, in-process, or finished industrial hemp product or smokable hemp flower, unless the grower is licensed as a processor-handler under the Industrial Hemp Research and Development Act or as a processor under the Medical Marihuana Facilities Licensing Act.

MCL 333.29609

House Bill 5061 would amend the Industrial Hemp Research and Development Act to revise definitions of defined terms as follows:

- Provide that the term **handle** (which means to possess, store, or transport industrial hemp on premises owned, operate, or controlled by a registered grower or licensed processor-handler) does not include the selling of industrial hemp.
- Delete the term **market** and remove it from provisions where it is used, including from the definition of **processor-handler**, which would be changed from a person licensed “to process, handle, broker, or market industrial hemp” to one licensed “to process, handle, or broker industrial hemp.”
- Amend the definition of **broker**, which now means “to engage or participate in the *marketing* of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers,” to instead mean “to engage or participate in the *promotion* of industrial hemp...”
- Amend the definition of **process**, which now means “to convert raw industrial hemp into a *marketable form*,” to instead mean “to convert raw industrial hemp into an intermediary, in-process, or finished commodity or product.”

The bill also would amend the title of the act to describe it as providing for the registration and licensing of certain persons engaged in the growing, processing, handling, *and brokering* of industrial hemp.

MCL 286.842 and 286.847

House Bills 5058 and 5617 are tie-barred to one another, which means that neither bill would take effect unless both bills were enacted.

BRIEF DISCUSSION:

The bills would establish a legal framework for hemp-derived cannabidiol (CBD) to be used as a food additive or as a dietary supplement. Hemp-derived CBD, used in many CBD products, has many beneficial properties, such as the potential to reduce pain and inflammation, but without the psychoactive properties of THC associated with CBD derived from marijuana. Enactment of the bills would mean that CBD products sold in the state would be regulated and subject to the state’s food and product labeling laws. In addition, the bills may remove any chilling effects on agriculture or commerce related to the lack of specific legalization of ingestible hemp products.

FISCAL IMPACT:

The Department of Agriculture and Rural Development indicates that House Bills 5058, 5060, and 5061 would not have an impact on agency costs or revenues.

House Bill 5060 would have an indeterminate fiscal impact on local court systems. There is no way to determine the number of purchasers who would bring civil actions against growers. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion and case types.

A fiscal analysis of House Bill 5617 is in progress.

POSITIONS:

The US Hemp Roundtable indicated support for the bills. (2-1-22)

The following entities indicated support for HBs 5058, 5060, and 5061:

- Department of Agriculture and Rural Development (2-1-22)
- Michigan Cannabis Industry Association (9-21-21)

iHemp Michigan indicated support for HB 5058. (9-21-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.