

HOUSE BILL NO. 5617

December 08, 2021, Introduced by Reps. Outman, Posthumus and Mueller and referred to the Committee on Regulatory Reform.

A bill to amend 2000 PA 92, entitled
"Food law,"
by amending section 1109 (MCL 289.1109), as amended by 2018 PA 92,
and by adding section 7136.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1109. As used in this act:
2 (a) "Guide for the control of molluscan shellfish" means
3 section II, ~~model ordinance, national shellfish sanitation program~~
4 ~~guide for the control of molluscan shellfish, Model Ordinance,~~
5 **National Shellfish Sanitation Program Guide for the Control of**

1 **Molluscan Shellfish**, 2009, recommendations of the ~~U.S.~~ **United**
2 **States** Department of Health and Human Services, Public Health
3 Service, Food and Drug Administration.

4 (b) "HACCP plan" means a written document that delineates the
5 formal procedures for following the hazard analysis and critical
6 control point principles developed by the National Advisory
7 Committee on Microbiological Criteria for Foods.

8 (c) "Imminent or substantial hazard" means a condition at a
9 food establishment that the director determines requires immediate
10 action to prevent endangering the **public** health. ~~of people.~~

11 (d) "**Independent testing laboratory**" means a laboratory that
12 **meets all of the following requirements:**

13 (i) Does not have a direct or indirect interest in the entity
14 whose product is being tested.

15 (ii) Does not have a direct or indirect interest in a facility
16 that cultivates, processes, distributes, dispenses, or sells
17 industrial hemp in this state or in another jurisdiction.

18 (iii) Does not have a direct or indirect interest in a facility
19 that cultivates, processes, distributes, dispenses, or sells
20 marihuana in this state or in another jurisdiction.

21 (iv) Is accredited by a third-party accrediting body as a
22 competent testing laboratory pursuant to ISO/IEC 17025 of the
23 International Organization for Standardization.

24 (e) "Industrial hemp" means that term as defined in section 3
25 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL
26 1, MCL 333.27953.

27 (f) ~~(d)~~ "Inspection" means the checking or testing of
28 observable practices against standards established in or adopted by
29 this act, accompanied by a report of findings.

1 **(g)** ~~(e)~~—"Juice" means the aqueous liquid expressed or
 2 extracted from 1 or more fruits or vegetables, purees of the edible
 3 portions of 1 or more fruits or vegetables, or any concentrates of
 4 such ~~the~~ liquid or puree **of 1 or more fruits or vegetables.**

5 **(h)** ~~(f)~~—"Label" means a display of written, printed, or
 6 graphic matter on the immediate container of ~~any~~**an** article and
 7 includes a requirement imposed under this act that any word,
 8 statement, or other information appearing on the display also
 9 appear on the outside container or wrapper of the retail package of
 10 the article or be easily legible through the outside container or
 11 wrapper.

12 **(i)** ~~(g)~~—"Labeling" means all labels and other written,
 13 printed, or graphic matter ~~upon~~**on** an article, any of its
 14 containers or wrappers, or accompanying the article.

15 **(j)** ~~(h)~~—"License holder" means the person ~~who~~**that** is legally
 16 responsible for the operation of a food establishment, including
 17 the owner, ~~the owner's agent, or other person operating~~**another**
 18 **individual who operates** under **the** apparent authority of the owner
 19 and ~~who~~ possesses a valid license to operate a food establishment.

20 **(k)** ~~(i)~~—"License limitation" means an action by which the
 21 director imposes restrictions or conditions, or both, on ~~a~~**the**
 22 license of a food establishment.

23 **(l)** ~~(j)~~—"Limited food processor" means a food processor that
 24 had in the preceding licensing year or is reasonably anticipated to
 25 have in the current licensing year \$25,000.00 or less in annual
 26 gross wholesale sales made or business done in wholesale sales.
 27 Only the food sales from the food processor operation must be used
 28 in computing the annual gross sales under this subdivision.

29 **(m)** ~~(k)~~—"Local health department" means that term as defined

1 in section 1105 of the public health code, MCL 333.1105, and having
2 those powers and duties as described in part 24 of the public
3 health code, MCL 333.2401 to 333.2498.

4 (n) ~~(l)~~ "Low-risk food" means any of the following:

5 (i) Raw or prepackaged food that is not potentially hazardous
6 food (time/temperature control for safety food).

7 (ii) Potentially hazardous food (time/temperature control for
8 safety food) that is prepared in a licensed facility and is not
9 prepared on-site.

10 (iii) Commercially processed potentially hazardous food
11 (time/temperature control for safety food) that is fully cooked and
12 heated only for hot holding.

13 (o) ~~(m)~~ "Michigan bridge card" means the card used for the
14 electronic benefit transfer system for food stamp distribution
15 required under section 14h of the social welfare act, 1939 PA 280,
16 MCL 400.14h.

17 (p) ~~(n)~~ "Micro market" means an operation that does all of the
18 following:

19 (i) Offers for sale commercially prepackaged foods properly
20 labeled for individual sale as required under section 3-201.11(C)
21 of the food code, except as provided under section 3-302.11(B)(1)
22 **of the food code**, and does not offer bulk food for sale.

23 (ii) Uses an automated payment system.

24 (iii) Controls the entry to the operation so that the operation
25 is accessible only by a defined population and is not accessible by
26 the general public.

27 (iv) Limits consumer food preparation to heating or reheating
28 food in a microwave oven.

29 (v) Utilizes continuous video surveillance of areas where

1 consumers view, select, handle, and purchase food. An operation
2 does not satisfy this subparagraph if the video surveillance is not
3 of sufficient resolution to allow for the identification of
4 situations that may compromise food safety or food defense.

5 (vi) If the operation uses a refrigerator unit or freezer unit,
6 the operation only uses a unit that has both of the following
7 features:

8 (A) Self-closing doors that allow food to be viewed without
9 opening the door.

10 (B) An automatic self-locking mechanism that prevents the
11 consumer from accessing the food if the refrigeration unit fails to
12 maintain the internal product temperature specified under section
13 3-501.16(A) (2) of the food code or the freezer unit fails to
14 maintain the food frozen.

15 (q) ~~(e)~~—"Milk product" means cream, light cream, light
16 whipping cream, heavy cream, heavy whipping cream, whipped cream,
17 whipped light cream, sour cream, acidified sour cream, cultured
18 sour cream, half-and-half, sour half-and-half, acidified sour half-
19 and-half, cultured sour half-and-half, reconstituted or recombined
20 milk and milk products, concentrated milk, concentrated milk
21 products, skim milk, lowfat milk, frozen milk concentrate, eggnog,
22 buttermilk, cultured milk, cultured lowfat milk, cultured skim
23 milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk,
24 acidified lowfat milk, acidified skim milk, low-sodium milk, low-
25 sodium lowfat milk, low-sodium skim milk, lactose-reduced milk,
26 lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically
27 processed and packaged milk, milk products with added safe and
28 suitable microbial organisms, and any other milk product made by
29 the addition or subtraction of milkfat or addition of safe and

1 suitable optional ingredients for protein, vitamin, or mineral
 2 fortification. Milk product includes dietary dairy products, dairy-
 3 based infant formula, ice cream and other frozen desserts, cheese,
 4 butter, and any other product derived from milk.

5 (r) ~~(p)~~ "Misbranded" means ~~food to which~~ any of the following
 6 ~~apply:~~ **as applied to food:**

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

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

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

12 (iv) Its container is ~~so~~ made, formed, or filled **so** as to be
 13 misleading.

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

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

25 (vii) It purports to be or is represented as a food ~~for which a~~
 26 ~~definition~~ **that is defined** and **has a** standard of identity ~~have been~~
 27 prescribed by regulations promulgated under the federal act or by
 28 rules, unless it conforms to the definition and standard and its
 29 label bears the name of the food specified in the definition and

1 standard, and, insofar as may be required by the regulations or
2 rules, the common names of optional ingredients, other than spices,
3 flavoring, and coloring, present in the food.

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

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

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

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

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

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

1 343.

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 applicable packaging and labeling
7 requirements under the federal act.

8 (s) ~~(q)~~—"Mobile food establishment" means a food establishment
9 operating from a vehicle, including a watercraft, that returns to a
10 mobile food establishment commissary for servicing and maintenance
11 at least once every 24 hours.

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

14 (u) ~~(s)~~—"Nonperishable food" means food that is not perishable
15 food.

16 (v) ~~(t)~~—"Perishable food" means any food that the
17 manufacturer, packer, or retailer, in conjunction with the
18 department, determines to have a significant risk of spoilage, loss
19 of value, or loss of palatability within 90 days of the date of
20 packaging.

21 (w) ~~(u)~~—"Person" means an individual, sole proprietorship,
22 partnership, corporation, association, or other legal entity.

23 (x) ~~(v)~~—"Pesticide chemical" means any substance that, alone,
24 in chemical combination, or in formulation with 1 or more other
25 substances, is a pesticide within the meaning of the federal
26 insecticide, fungicide, and rodenticide act, 7 USC 136 to 136y, and
27 is used in the production, storage, or transportation of raw
28 agricultural commodities.

29 (y) ~~(w)~~—"Principal display panel" means that part of a label

1 that is most likely to be displayed, presented, shown, or examined
2 under normal and customary conditions of display for retail sale.

3 **(z)** ~~(x)~~—"Priority foundation item" means a provision in the
4 food code whose application supports, facilitates, or enables 1 or
5 more priority items. Priority foundation item includes an item that
6 requires the purposeful incorporation of specific actions,
7 equipment, or procedures by industry management to attain control
8 of risk factors that contribute to foodborne illness or injury such
9 as personnel training, infrastructure, or necessary equipment,
10 HACCP plans, documentation or record-keeping, and labeling. A
11 priority foundation item is an item that is denoted in the food
12 code with a superscript Pf-^{Pf}.

13 **(aa)** ~~(y)~~—"Priority item" means a provision in the food code
14 whose application contributes directly to the elimination,
15 prevention, or reduction to an acceptable level of hazards
16 associated with foodborne illness or injury if there is no other
17 provision that more directly controls the hazard. Priority item
18 includes an item with a quantifiable measure to show control of
19 hazards such as cooking, reheating, cooling, or hand washing. A
20 priority item is an item that is denoted in the food code with a
21 superscript P-^P.

22 **(bb)** ~~(z)~~—"Public health code" means 1978 PA 368, MCL 333.1101
23 to 333.25211.

24 **Sec. 7136. (1) Industrial hemp that is added to food or a**
25 **dietary supplement must comply with the requirements under the**
26 **industrial hemp growers act, 2020 PA 220, MCL 333.29101 to**
27 **333.29801, or 7 USC 1639o to 1639s, or otherwise comply with the**
28 **applicable laws of the jurisdiction where the industrial hemp was**
29 **grown.**

1 (2) Food or a dietary supplement that contains or has added to
2 it any quantity of an industrial hemp-derived cannabinoid may be
3 sold in this state only if the food or dietary supplement meets all
4 of the following requirements:

5 (a) Is tested by an independent testing laboratory.

6 (b) Is accompanied by a certificate of analysis that meets the
7 requirements described under subsection (3).

8 (c) Is labeled in accordance with the requirements described
9 under subsection (4).

10 (3) An independent testing laboratory shall test food or a
11 dietary supplement that contains or has added to it any amount of
12 an industrial hemp-derived cannabinoid and provide a certificate of
13 analysis that contains test results for all of the following:

14 (a) Total delta-9-THC. As used in this subdivision, "total
15 delta-9-THC" means that term as defined in section 103 of the
16 industrial hemp growers act, 2020 PA 220, MCL 333.29103.

17 (b) Cannabinoids.

18 (c) Pesticides, heavy metals, residual solvents, mycotoxins,
19 or microbiological contaminants that are or may be dangerous to the
20 public health.

21 (4) Food or a dietary supplement that contains or has added to
22 it any amount of an industrial hemp-derived cannabinoid must be
23 labeled, and the label must contain all of the following
24 information:

25 (a) The serving size.

26 (b) If specific cannabinoids are marketed, the number of
27 milligrams of each cannabinoid per serving.

28 (c) A scannable bar code, quick response (QR) code, or web
29 address linked to a document or website that provides access to the

1 certificate of analysis described under subsection (3).

2 Enacting section 1. This amendatory act does not take effect
3 unless House Bill No. 5058 of the 101st Legislature is enacted into
4 law.