

# 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**

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

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

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

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

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

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

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

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

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

(f) ~~(d)~~ "Inspection" means the checking or testing of observable practices against standards established in or adopted by 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

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

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

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

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

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

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

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

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

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



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

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

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

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

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