

**FOOD SAFETY**  
**State and Federal Standards and Regulations**

***Kentucky***

**1999**

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## KENTUCKY

### Introduction

Kentucky's Food, Drug, and Cosmetic Act mimics the Federal Food, Drug and Cosmetic Act very closely. The exceptions and deviations will be specially noted.

### Definitions

Kentucky has defined “food” as articles used for food or drink for man or animals; chewing gum; or articles used for components of any such article.<sup>1064</sup> This duplicates the Federal Food, Drug and Cosmetic Act’s language.

The term “labeling” means all labels and other written, printed or graphic matter upon or accompanying an article.<sup>1065</sup>

### Misleading

If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of

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<sup>1064</sup> KY. REV. STAT. ANN. § 217.015(4), (1995 & Supp. 1996).

<sup>1065</sup> § 217.015(11).

use as are customary or usual.<sup>1066</sup>

### **Food Additive**

“Food additive” means any substance, the intended use of which results or may be reasonably expected to result, directly, or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures, or in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:

- (a) a pesticide chemical in or on a raw agricultural commodity;
- (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
- (c) a color additive;
- (d) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additive Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Meat Inspection Act of 1907 and subsequent amendments thereto.<sup>1067</sup>

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<sup>1066</sup> § 217.015(12)

<sup>1067</sup> § 217.045.

## **Unsafe Food Additives**

If a poisonous or deleterious substance is added to any food, and is not required by production methods, or cannot be avoided by good production or manufacturing practices, then the food substance is determined to be unsafe. The only exception noted is one for substances which have a tolerance level prescribed for them, or the substance is exempted under the Federal Act or the Federal Environmental Pesticide Act of 1972.<sup>1068</sup>

## **When Food is Deemed Adulterated**

The Kentucky Statute on adulterated food is verbatim to the Federal Act with a few exceptions. Parts four and five are deviations from the Federal adulteration standard. Part four states that a food will be deemed adulterated if it “bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.” Part five describes an adulterated food as “filled milk.”<sup>1069</sup> Filled milk is discussed later under the dairy provisions of the Kentucky Statutes. Part three is a slight deviation from the federal act which discusses confectionaries. The Kentucky Act is much more specific as it relates to glaze, harmless natural wax, harmless natural gum and pectin percentages.<sup>1070</sup>

Otherwise, Kentucky's Act states that a food is deemed to be adulterated when:

- (1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this subsection if the quantity of such

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<sup>1068</sup> § 217.045

<sup>1069</sup> §§ 217.025(4)-(5).

<sup>1070</sup> § 217.025(3).

- substance in such food does not ordinarily render it injurious to health;
- (2) it bears or contains any added poisonous or deleterious substance which is unsafe within the meaning of KRS (KY. REV. STAT.) 217.045;
  - (3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
  - (4) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;
  - (5) it is a product of a diseased animal, or an animal that died from other than slaughter, or from an animal that has been fed on uncooked offal from a slaughterhouse;
  - (6) the container is composed, entirely or partially, of any poisonous or deleterious substance which may render the contents injurious to health;
  - (7) any valuable part has been partially or completely omitted or extracted;
  - (8) any part has been partially or completely substituted;
  - (9) damage or inferiority has been concealed in any way;
  - (10) anything has been added to increase the bulk or weight, reduce or strengthens its quality, or make it appear better or of greater value than it is.<sup>1071</sup>

### **When Food is Deemed Misbranded**

Again, Kentucky's statute mimics the language of the Federal Act. The only exception to the Federal Act is products intended for use as an ingredient of another food. If the product is

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<sup>1071</sup> § 207.025.

used according to the directions of the purveyor and that use will result in the final product being adulterated or misbranded, then the food will be deemed misbranded.<sup>1072</sup>

Otherwise, Kentucky's Act states that a food is misbranded when:

- (1) its labeling is false or misleading or the labeling or packaging does not conform with labeling requirements set forth in KY. REV. STAT. § 217.037;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food that has been defined, standardized, and identified by KY. REV. STAT. § 217.135, or it is an imitation of another food that is not subject to (7) of this section, unless the label is obvious enough and the word “imitation” appears directly after the name of the food imitated ;
- (4) its container is misleadingly made, formed or filled;
- (5) in a package form, the label does not contain:
  - (a) the manufacturer's, packer's, or distributor's name and place of business;
  - (b) an accurate statement of quantity, by weight, or other measure;
- (6) the label is not conspicuous and easily understood by the ordinary user of the product;
- (7) the food claims to be a defined and standardized food as prescribed by KY. REV. STAT. § 217.135, unless:
  - (a) it conforms to the definition and standard; and
  - (b) its label contains the name of the defined and standardized food, and if required, the common names of optional ingredients that are in the food;

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<sup>1072</sup> § 217.035(12).

- (8) it purports to be or is represented as:
  - (1) a food defined and standardized under KY. REV. STAT. § 217.135, but falls below that standard, unless the label indicates that the food falls below the standard; or
  - (b) a food with prescribed container fill requirements, and it falls below the standard prescribed by KY. REV. STAT. § 217.135, unless the label so indicates;
- (9) the food is not subject to part (7), unless it bears labeling:
  - (a) that clearly states the common name of the food;
  - (b) if it is made from two or more ingredients, the common name of all ingredients, with the exception of spices, flavorings, and colorings that do not otherwise need to be named, if such naming is impractical or deceptive, or results in unfair competition;
- (10) the label does not state vitamin, mineral, and other dietary properties and the food claims to be a dietary use product;
- (11) the labeling does not state the presence of artificial flavoring, artificial coloring, or chemical preservatives;
- (12) it is a raw agricultural commodity produced from the soil that bears or contains a pesticide chemical applied after harvest, unless the container's label states that the chemical has been applied, and declares the name and function of the chemical; however, no declaration is necessary, if it is customary for the product to be displayed at the retail level out of the shipping container; or

(13) the color additive labeling requirement does not comply with the federal act.<sup>1073</sup>

### **Fair Packaging and Labeling**

The Kentucky Statute has the same exact requirements of the Federal Fair Packaging and Labeling Act.<sup>1074</sup>

### **Detention or Quarantine of Articles**

When authorized agents of the Cabinet for Human Resources either find, or have probable cause to believe that a food is adulterated or misbranded within the definitions, they may tag or mark the item and give notice that the item is or is under suspicion of being adulterated or misbranded. They can detain or quarantine the item and warn all persons not to dispose of the article by sale or otherwise. No person shall dispose or sell the item once notified, without permission.<sup>1075</sup>

If the agent determines that the item in question is misbranded or adulterated, then they shall petition the District Court judge in the jurisdiction where the article has been detained or quarantined for condemnation of the article. If it is determined that the article is not adulterated or misbranded, then the agent shall remove the tag or other marking. If the article is deemed adulterated or misbranded, then the article will be destroyed at the expense of the claimant, under the supervision of the agent. All court, storage, and other costs, will be assessed against the claimant. On the other hand, if the misbranding or adulteration can be corrected by labeling or processing, then the article will be given to the claimant for such corrections. All of these

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<sup>1073</sup> § 217.035.

<sup>1074</sup> Compare § 217.037 with 15 U.S.C. § 1451 *et seq.*

<sup>1075</sup> KY. REV. STAT. ANN. § 217.115.

corrections will take place under the supervision of the agent. The expense of the supervision will be paid by the claimant.<sup>1076</sup>

After a state of emergency has been declared if the cabinet or its agent finds in any room, building, vehicle, or other structure, any food which is unsound or contains “any filthy, decomposed, or putrid substance, or which may be poisonous or deleterious to health or otherwise unsafe,” then such food will be declared a nuisance. The cabinet or its authorized agent shall then condemn, destroy or otherwise render the same unfit for human use.<sup>1077</sup>

### **Enforcement**

The Secretary of the Cabinet for Human Resources has the authority to enforce and administer Kentucky’s Food, Drug, and Cosmetic Act.<sup>1078</sup> Of particular interest is the enforcement of food establishment law which involve the inspection and permitting of food establishments. To this end, annual permits are required to operate a food processing establishment, retail food establishment, or food storage warehouse.<sup>1079</sup>

### **Setting Food Standards by Regulation**

This is a special provision that ensures the promotion of honesty and fair dealing in the interest of consumers. It allows the secretary to establish standards for foods and classes of foods, including quality, identity, and ingredients. It also conforms as far as practicable to the

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<sup>1076</sup> § 217.115.

<sup>1077</sup> *Id.*, see also KY. REV. STAT. § 217.390.

<sup>1078</sup> § 217.125.

<sup>1079</sup> § 217.380. Private, parochial, and public school cafeterias, all facilities operated by the Cabinet for Human Resources, and the Department of Corrections must meet with requirements set forth in the Act, but are exempted from fees.

Federal Meat Inspection Act and the Federal Poultry Products Inspection Act.<sup>1080</sup>

### **Cabinet's Right of Inspection**

The cabinet or its authorized agent has free access at reasonable times to inspect any factory warehouse, or establishment where food is manufactured, processed, packed, or held for sale, or held after receipt in commerce, or to inspect any vehicle being used to transport or hold the food. The purpose of the inspections is to check for violations of KY. REV. STAT. § 217.005-217.215; to secure samples of food to inspect it for violations; or to examine or copy books, papers, or other evidence relating to the food. These actions can be conducted by the local health departments.<sup>1081</sup>

### **Prohibited Acts**

In addition to the prohibitions under the Federal Act, Kentucky also prohibits the manufacture, sale or exchange of filled milk and requires flour, flour products and bread to be enriched.<sup>1082</sup>

### **Duty of Local Prosecuting Attorneys**

There is an affirmative duty for local prosecuting attorneys to report violations of Kentucky's Food, Drug and Cosmetic Act. Before criminal proceedings are initiated, the person against whom charges may be brought has a right to notice and a hearing.<sup>1083</sup>

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<sup>1080</sup> § 217.135.

<sup>1081</sup> § 217.155.

<sup>1082</sup> § 217.175.

<sup>1083</sup> § 217.185.

## **Cabinet's Powers**

The Cabinet is not required to prosecute violations when it believes that a written notice or warning will be sufficient to protect the public interest.<sup>1084</sup> Even if there is no civil or criminal action that will stand against a violator, the Cabinet may enjoin the offender's activity.<sup>1085</sup>

## **Food Establishment Law**

Kentucky's code has sections which outline sanitary requirements for food establishments. These include building, construction, and maintenance requirements to ensure food quality and freedom from contamination.<sup>1086</sup>

## **Conditions Deemed a Nuisance**

If any establishment violates Kentucky's food establishment law mentioned above, it will be deemed a nuisance.<sup>1087</sup> There are applicable fines and penalties for operating a nuisance.<sup>1088</sup>

## **Milk and Milk Products**

Kentucky has delineated standards for milk and milk products.<sup>1089</sup> The Cabinet has been designated as the sole state agency responsible for the state's milk control program.<sup>1090</sup> The state gives full authority to the secretary of the Cabinet for Human Resources to adopt rules and regulations regarding all aspects of milk production, including the inspection of dairy herds,

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<sup>1084</sup> *Id.* § 217.195.

<sup>1085</sup> *Id.* § 217.205.

<sup>1086</sup> §§ 217.280- 217.360.

<sup>1087</sup> § 217.330.

<sup>1088</sup> § 217.380.

<sup>1089</sup> § 217C.010 et seq. (1995).

<sup>1090</sup> § 217C.050.

farms, and milk plants. Moreover, milk producers, haulers, transfer stations, distributors, processors and plants are subject to the secretary's authority. The statute also gives the secretary power to "regulat[e] such other matters relating to milk and milk products as may be necessary to protect the public health."<sup>1091</sup>

The Cabinet may enter into reciprocal agreements with federal and state milk control officials if the federal or state requirements are equivalent to Kentucky's.<sup>1092</sup> Monetary penalties for a violation of the Milk and Milk Products Code are set forth in KY. REV. STAT. § 217C.990.

### **Sale of Unpasteurized Goat Milk**

With a prescription from a physician, the sale of unpasteurized goat milk is allowed.<sup>1093</sup>

### **Frozen Food Locker Regulation**

Kentucky has set forth a rather extensive regulatory scheme for frozen food locker plants. The code outlines the procedure for licensing, storage and refrigeration requirements, inspections, and penalties associated with non-compliance of the statutes.<sup>1094</sup> The regulation of frozen food locker plant chapter also includes a policy statement that reflects Kentucky's concern for the health, safety, and welfare of the people of the state.<sup>1095</sup>

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<sup>1091</sup> § 217C.040.

<sup>1092</sup> § 217C.060.

<sup>1093</sup> § 217C.090.

<sup>1094</sup> § 221.010 et seq. (1995 & Supp. 1996).

<sup>1095</sup> § 221.110.