

FOOD SAFETY
State and Federal Standards and Regulations

Michigan

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MICHIGAN

Michigan has defined "food" as articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article.¹²⁸² This duplicates the Federal Food, Drug and Cosmetic Act's language.

The term "label" means displays of written, printed, or graphic matter, on the immediate container of any article. The label must be on the outside container or retail package of the product, or easily read through the outside container or wrapper.¹²⁸³

The term "labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying the article.¹²⁸⁴

"Contaminated with filth" applies to any food not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.¹²⁸⁵

"Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with 1 or more other substances is an "economic poison" within the meaning of [FIFRA] of 1949, as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.¹²⁸⁶

"Raw agricultural commodity" means any food in its raw or natural state, including

¹²⁸² MICH. COMP. LAWS ANN. § 289.702(2) (West 1984).

¹²⁸³ § 289.702(3).

¹²⁸⁴ *Id.* at (5).

¹²⁸⁵ § 289.703(2).

¹²⁸⁶ § 289.703(3).

unpeeled natural form fruits.¹²⁸⁷

Food Additives

“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 such 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 case of a substance used in a food before 1958 through scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use. However, the term does not include:

- (1) a pesticide chemical in or on a raw agricultural commodity;
- (2) 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;
- (3) a color additive; or
- (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958 to the federal act; the federal poultry products inspection act or the federal meat inspection act, as amended.¹²⁸⁸

Prohibited Acts

Committing, or causing to be committed the following, are prohibited:

¹²⁸⁷ § 289.703(4).

¹²⁸⁸ § 289.704 § 4.

- (1) manufacturing, selling, delivering, holding, offering for sale, or receipt of any adulterated or misbranded food;
- (2) adulterating or misbranding any food;
- (3) selling, delivering for sale, holding, or offering for sale, food in violation of section 289.718 (food contaminated with microorganisms);
- (4) false advertising, refusal to cooperate with inspections, sampling;
- (5) removing or disposing detained or embargoed food;
- (6) tampering with labeling; or
- (7) permitting filthy or insanitary conditions to exist where food is intended for human consumption, including manufacturing and storage establishments.¹²⁸⁹

Labeling Violations and Exceptions

Labeling violations will be examined under normal and customary use conditions. If a label complies with the federal act, then there is no violation under this act.¹²⁹⁰

Temporary or permanent injunctive relief is available under this act.¹²⁹¹

A violation of this act constitutes a misdemeanor and the violator is subject to fines and imprisonment. There is a good faith exception for a receiver of adulterated or misbranded food.¹²⁹²

¹²⁸⁹ § 289.707.

¹²⁹⁰ § 289.708.

¹²⁹¹ § 289.709.

¹²⁹² § 289.710.

Tagging Adulterated or Misbranded Food

When an authorized agent of the department either finds, or has probable cause to believe that a food is adulterated or misbranded or dangerous to human health or fraudulent, they may tag or mark the item, and give notice that the item is or is suspected of being adulterated or misbranded. They can detain or embargo the item and warn all persons not to dispose of the article by sale or otherwise, until they are given permission to do so. No person shall dispose or sell the item once notified, without permission.¹²⁹³

If the agent determines that the item in question is misbranded or adulterated, then they shall petition the circuit court in the jurisdiction where the article has been detained or embargoed for a libel for condemnation of the food. If it is determined that the food is not adulterated or misbranded, then the agent shall remove the tag or other marking.¹²⁹⁴

If the food is deemed adulterated or misbranded, then it will be destroyed at the expense of the claimant, under the supervision of the agent. All court, storage, and other costs will be taxed against the claimants. If the adulteration or mislabeling can be corrected by re-labeling or processing, then it can be done if supervised by the agent.¹²⁹⁵

Condemnation or Destruction

The department, or any of its authorized agents, shall destroy or condemn any perishable food which is unsound, filthy, decomposed or putrid, or that may be poisonous or deleterious to

¹²⁹³ § 289.711.

¹²⁹⁴ *Id.*

¹²⁹⁵ § 289.712.

health, or otherwise unsafe, the same being declared a nuisance.¹²⁹⁶

Proceedings, Notice, Minor Violations

The prosecuting attorney shall proceed without delay against violations of this section. Notice shall be given to the manufacturer and distributor of goods which are the subject of a proceeding. If the department believes that a minor violation of this section can be corrected with a written notice or warning, a proceeding is not necessary.¹²⁹⁷

There is a policy statement relating to fair dealing with consumers in MICH. COMP. LAWS ANN. § 289.715, and again, a reference to the conformity of this section with the federal act.¹²⁹⁸

When Food is Deemed Adulterated

The Michigan statute on adulterated food is verbatim to the Federal Act with few exceptions. Part (c) is a slight deviation from the federal act which discusses confectionaries. The Michigan Act is specific as it relates to glaze, harmless natural wax, harmless natural gum and pectin percentages.¹²⁹⁹

Otherwise, Michigan'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 if the substance is not an added substance, the food shall not be considered adulterated under this clause if the quantity of such substance in the food does not ordinarily render it injurious to health;

¹²⁹⁶ § 289.713.

¹²⁹⁷ § 289.713a.

¹²⁹⁸ § 289.715.

¹²⁹⁹ § 289.716.

- (2) if it bears or contains any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which is unsafe within the meaning of section 21; or (B) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 21; or (C) it is or it bears or contains any food additive which is unsafe within the meaning of section 21; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 21, and such raw agricultural commodity has been subjected to processing...the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provision of sections 21 and 22 and clause (C) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;
- (3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, 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 the product of a diseased animal or one that did not die by slaughter. A food

also will be adulterated if the animal fed in uncooked garbage or offal from a slaughterhouse, or if the container in any way is made of any poisonous or deleterious substance;

- (6) any valuable part has been partially or completely omitted, substituted, or extracted; or if anything has been added to increase the bulk or weight, reduce or strengthens its quality, or make it appear falsely to be of greater value than it actually is;
- (7) it is or bears an unsafe color additive within the meaning of section 21.¹³⁰⁰

When Food is Deemed Misbranded

Again, Michigan's statute mimics the language of the Federal Act.

A food is misbranded when:

- (a) its labeling is false or misleading;
- (b) it is offered for sale under the name of another food;
- (c) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by section 15 or under the federal act; or it is an imitation of another food that is not subject to subsection (g) of this section, unless its label bears, in type of uniform size and prominence, the word "imitation" appears directly after the name of the food imitated;
- (d) the container is misleadingly made, formed or filled;
- (e) in a package form, the label does not contain:
 - (1) the manufacturer's, packer's, or distributor's name and place of business;

¹³⁰⁰ *Id.*

- (2) an accurate statement of quantity, by weight, or other measure, however, reasonable variations are permitted;
- (f) the label is not conspicuous and easily understood by the ordinary user of the product;
- (g) the food claims to be a defined and standardized food as prescribed by section 15 or the federal act, and does not conform to the definition and standard, unless 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;
- (h) it purports to be or is represented as a food standardized under section 15, but falls below that standard, unless the label indicates that the food, or fill requirements, fall below the standard;
- (i) the food is not subject to part (g), unless it bears labeling
 - (1) that clearly states the common name of the food; and
 - (2) 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;
- (j) the labeling does not state the presence of artificial flavoring, artificial coloring, or chemical preservatives, however, exemptions will be recognized if compliance with this part is impracticable;
- (k) the label does not state vitamin, mineral, and other dietary properties if it claims to be a dietary use product, so that consumers may be informed as to real value of

the product. Exemptions will be recognized if compliance with this part is impracticable;

- (l) the product is to be used for an ingredient of another food and when used according to the directions of the purveyor, will result in an adulterated or misbranded final food product; or
- (m) it is a color additive, the packaging and labeling does not conform with the federal act provisions for color additives.¹³⁰¹

Microorganism Contamination

Sections 289.718 and 719 protect consumers from food that may contain levels of contamination by microorganisms.¹³⁰²

Denial of Access

Denial of access for inspection of facilities is grounds for license suspension.¹³⁰³

Unsafe Food Additives Exception

Any food or color additive, poisonous or deleterious substance, pesticide chemical, or raw agricultural commodity, will not deem a food adulterated under this act if there is a federal exemption for the additive.¹³⁰⁴

Additives Regulations

The department may establish regulations, such as zero tolerances, for food additives,

¹³⁰¹ §§ 289.716, 289.717.

¹³⁰² MICH. COMP. LAWS ANN. § 289.719 outlines provisions for the suspension and reinstatement of permits with respect to violations of this section.

¹³⁰³ § 289.721.

¹³⁰⁴ § 289.721.

added poisonous or deleterious substances etc., when the consumer safety will be served.¹³⁰⁵

Rules

The department of agriculture has the authority to promulgate rules under this act.¹³⁰⁶

Access to Factory

The department or its agent may enter and inspect at reasonable hours any factory, warehouse, establishment, or vehicle, in which foods are transported, sold, held, packed, manufactured, or processed. The department also may secure necessary samples to evaluate violations of this act.¹³⁰⁷

Annual Report to Governor

The department shall submit an annual report to the governor and legislature which summarizes all judgments, etc. under this act. The department may also disseminate information to the public as it deems necessary in the interest in the public safety against health, and fraud. This section also contains a statement which reads, “[n]othing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.”¹³⁰⁸

Food and Drug Commissioner

Commissioner Powers

The Food and Drug Commissioner or his duly authorized agents have the charge and

¹³⁰⁵ § 289.722.

¹³⁰⁶ § 289.723.

¹³⁰⁷ § 289.724.

¹³⁰⁸ § 289.725.

supervision of the enforcement of all dairy, food, drug, and liquor business, weights and measures, and all other laws which may be imposed by law and within the pure foods and standards act.¹³⁰⁹ The act further delineates the entitlement of the advice and assistance of the attorney general and all prosecuting attorneys , sheriffs, police officers, and other peace officers, to aid the Commissioner.¹³¹⁰ The act goes on to state that if an attorney etc. is requested to help the Commissioner and does not do so, they may be removed from office.¹³¹¹

Dairy and Food Commissioner

Dairy, Food, and Drink Products, Inspection, Commencement of Proceedings, Right of Entry, Warning Notice Failure to Obey, Penalty

Section 289.36 gives broad power for the Commissioner and their agent to enter and inspect food products for unwholesomeness, adulteration, or impurity. The Commissioner and agents have the authority to commence actions against persons believed to be violating provisions of this chapter. This statute also has specific provisions for sample taking by the Commissioner or agent. The section provides that if the inspection results in an unfavorable result, the Commissioner must notify the and warn the proprietor of the establishment where the food is stored, manufactured, deposited, or sold. The proprietor has a reasonable amount of time to correct the problem, but if they do not, they are guilty of a misdemeanor; subject to fines and imprisonment.¹³¹²

¹³⁰⁹ § 289.2.

¹³¹⁰ § 289.7.

¹³¹¹ § 289.9.

¹³¹² § 289.36.

Seizure of Certain Products

This section gives the Commissioner and their agents broad power to seize and take possession at any time, products which are contrary to the provisions of this act. The section further outlines specific sample taking methods that the Commissioner or their agent must adhere to. It further outlines procedure for complaining against an alleged violator of this act.¹³¹³

The appeal process regarding violations of this act are near as they can be to civil appellate processes. The attorney general has an affirmative duty to prosecute violators of this act.¹³¹⁴

Publication of Reports by Commissioner

The Commissioner must publish annually the findings, judgments, and investigations, of cases resulting from violation of this chapter. The Commissioner must also publicly disclose information in bulletin form.¹³¹⁵

Interference With Commissioner or Inspectors

Any person who willfully interferes with the Commissioner or inspector is guilty of a misdemeanor and subject to fines and imprisonment.¹³¹⁶

Commissioner Duty with Respect to Dairies, Etc.

The Commissioner has an affirmative duty to “foster and encourage the dairy industry of the state.” This section outlines investigatory measures to ensure a safe dairy supply from farm

¹³¹³ *Id.* There are specific time requirements for appearances and service.

¹³¹⁴ § 289.37

¹³¹⁵ § 289.39.

¹³¹⁶ § 289.40; *see also* MICH. COMP. LAWS ANN. § 289.61.

to manufacture.¹³¹⁷

Prohibition Against Distribution of Impure or Unwholesome Dairy Products

This section prohibits the distribution of unwholesome or impure dairy products. A person who is found guilty of violating this provision is subject to fines and imprisonment.¹³¹⁸

This section lists all types of dairy product producer, seller, manufacturer, and processors.¹³¹⁹

Standards of Purity for Food and Drugs

Standards of Food

This provision establishes that the standards for foods shall conform to those promulgated by the United States secretaries of agriculture and health and human services.¹³²⁰

Immature or Unwholesome Calves

Miscellaneous Provisions

There is a prohibition against selling and transporting young, immature meat from young animals.¹³²¹

The generic penalty for violations of this act is a misdemeanor and fines and possible imprisonment in the county jail.¹³²²

The act contains a public policy of sorts, § 289.253 reads: “this act is immediately

¹³¹⁷ § 289.43.

¹³¹⁸ § 289.44.

¹³¹⁹ *Id.* see also MICH. COMP. LAWS ANN. § 289.45.

¹³²⁰ § 289.111 (1998 Supp.).

¹³²¹ § 289.251.

¹³²² § 289.252.

necessary for the public health.”¹³²³

False Advertising of Meat and Meat Products

Meat and Meat Product Labeling

Michigan has an extensive prohibition against false advertising with respect to meat and meat products. It prohibits falsities regarding grade, quality, or classification of the product.

Eggs

Standards or standards of quality mean United States Department of Agriculture standards.¹³²⁴

Eggs Unfit for Human Food

Those which are “described by the United States Department of Agriculture as black rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, stuck yolks, blood rings, or embryos beyond blood ring state, moldy eggs, musty eggs, bloody whites, crusted yolks, eggs with abnormal odors, and any eggs which contain wholly or in part a tainted, diseased, filthy, decomposed, or putrid substance are deemed to be unfit for human food. Such eggs shall be denatured or disposed of by a method approved by the director.”¹³²⁵

Standards for Eggs

All eggs must meet specific standards before they are labeled and sold as a particular type of egg.¹³²⁶

¹³²³ § 289.253.

¹³²⁴ § 289.321a.

¹³²⁵ § 289.323.

¹³²⁶ §§ 289.328, 329.

Director May Establish Rules and Regulations

The director of agriculture has the authority to issue regulations and rules with respect to this act.¹³²⁷

Miscellaneous Provisions of This Section

The false or misleading sale of eggs is prohibited.¹³²⁸ Quality and temperature tolerances are set forth in this act.¹³²⁹ Violations of this chapter constitute a misdemeanor.¹³³⁰

Comminuted Meat Law

This section begins at MICH. COMP. LAWS ANN. § 289.581. The definition of comminuted meat is “meat that has been subjected to a process whereby it has been reduced to minute particles.”¹³³¹

This section of the act contains standards for certain meats cuts and meat products.¹³³² It also contains provisions for marking and grading meat and meat products, as well as proper labeling measures.¹³³³ There are also provisions pertaining to ingredient standards.¹³³⁴

This section also has a separate adulteration standard set forth. This standard is identical

¹³²⁷ § 289.334.

¹³²⁸ § 289.324.

¹³²⁹ §§ 289.330, 332.

¹³³⁰ § 289.335.

¹³³¹ § 289.581.

¹³³² *See* MICH. COMP. LAWS ANN. § 289.582-583, 587.

¹³³³ *See* MICH. COMP. LAWS ANN. § 289.584.

¹³³⁴ *See* MICH. COMP. LAWS ANN. § 289.584a.

to the one set forth in MICH. COMP. LAWS ANN. § 289.716.¹³³⁵

The next section of the chapter outlines provisions for licensing, application, fees, issuance, and renewal.¹³³⁶

There is a special exception under this section for baby food. It does not have to comply with this section of the act if it is manufactured etc. specifically for use as baby food.¹³³⁷

Notice and Penalties

Notice to potential violators required.¹³³⁸ Violations of this section are a misdemeanor and are punishable by jail time and fine. There may be a revocation or suspension of a proprietor's license if they do not meet statutory requirements. They are entitled to a hearing, and an appeal.¹³³⁹

Federal Cooperation

The director of the state department of agriculture is authorized to cooperate with the United States department of agriculture, or any other federal agency or instrumentality of any state, and with any association or organization to enforce the rules and regulations delineated by this act; anything that may further the purpose of this act.¹³⁴⁰

¹³³⁵ § 289.586.

¹³³⁶ § 289.588.

¹³³⁷ § 289.589a.

¹³³⁸ § 289.589b.

¹³³⁹ § 289.590.

¹³⁴⁰ § 289.642.

