

FOOD SAFETY
State and Federal Standards and Regulations

Wisconsin

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Wisconsin's Department of Agriculture, Trade and Consumer Protection is responsible for administering and enforcing the provisions of Wisconsin's Food and Drug Act, § 97.01 et seq.²⁹⁰⁴

Definitions

“Distressed food” means food or packages or containers of food that have been damaged or rendered unsafe or unsuitable for sale or use as food during transportation, storage, handling or sale, or if the label has been lost, defaced, or obliterated.

“Food” means articles used for food or drink by persons, chewing gum, and articles used for components of such food, drink or chewing gum.

"Label" means a display of written, printed, or graphic matter, upon the immediate container of any article; and a requirement that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper.

“Labeling” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

“Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is “a pesticide” within the meaning of § 94.67(25) and which is used in the production, storage, or transportation of raw agricultural commodities.

“Raw agricultural commodity” means any food in its raw or natural state, including all

²⁹⁰⁴ WIS. STAT. ANN. § 97.12 (West 1990 & Supp. 1998).

fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.

“Salvaging distressed food” means reconditioning or preparing distressed food for sale or use as food, including cleaning, culling, sorting, scouring, labeling, packaging, processing, or treating the food.”

“Sell, sale, or sold” includes delivering, shipping, consigning, exchanging, offering, or exposing for sale, or having in possession with intent to sell.

“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 if such substance is not generally recognized, among scientific experts as being shown through scientific procedures to be safe under the conditions of its intended use; except that such term does not include: a pesticide chemical in or on a raw agricultural commodity; 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; a color additive; or any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958, pursuant to the to the federal act.

“Color additive” is a material which is a dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; and which when added or applied to a food is capable of imparting color thereto; except that such term does not include any material which has been or is exempted under the federal

act.²⁹⁰⁵

Adulterated food

This Act mimics for the most part, the Federal Food , Drug, and Cosmetic Act's definition of adulterated. It reads as follows:

“A food is adulterated:

- (1) if 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 paragraph if the quantity of the substance in such food does not ordinarily render it injurious to health;
- (2) if it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive, which is unsafe within the meaning of the federal act or any deleterious substance not a necessary ingredient in its manufacture;
- (3) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of the federal act;
- (4) if it bears or contains any food additive that is unsafe within the meaning of the federal act, but where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under the federal act and the raw agricultural commodity has been subjected to processing, the residue of such pesticide chemical remaining in or on

²⁹⁰⁵ § 97.01.

such processed food shall not be deemed unsafe if the residue in the processed food when ready-to-eat is not greater than the tolerance prescribed for the raw agricultural commodity;

- (5) if it is or bears or contains any color additive which is unsafe within the meaning of the federal act or other provisions in this section;
- (6) if it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
- (7) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or may have been rendered injurious to health;
- (8) if it is the product of a diseased animal or one that did not die by slaughter or one that fed upon uncooked offal from a slaughterhouse;
- (9) if its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;
- (10) if any valuable constituent has been, in whole or in part, omitted or abstracted therefrom;
- (11) if any substance has been substituted in whole or in part; or
- (12) if damage or inferiority has been concealed in any manner;
- (13) if any substance has been added mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

This section also prescribes alcohol content and particulars for confectionaries.²⁹⁰⁶

Standards of Misbranding

Again, Wisconsin's statute for the misbranding of food replicates the language of the federal act.

A food is misbranded when:

- (1) its labeling is false or misleading;
- (2) it is offered for sale under the name of another food;
- (3) its container is misleadingly made, formed or filled;
- (4) in a package form, and the label does not contain the manufacturer's, packer's, or distributor's name and place of business and an accurate statement of quantity, by weight, or other measure;
- (5) the label is not conspicuous and easily understood by the ordinary user of the product;
- (6) the food claims to be a defined and standardized food as prescribed by § 97.09 or the federal act and it does not conform to the definition and standard;
- (7) it purports to be a standard of quality under § 97.09, but falls below that standard, unless the label indicates that the food falls below the standard;
- (8) it is represented as a food for which standards or standards of fill of container have been prescribed under § 97.09, unless the label indicates that the fill falls below the standard;
- (9) the food does not have a standard definition or standard of identity, unless the

²⁹⁰⁶ § 97.02.

label must clearly states the common name of the food, and in case it is made from two or more ingredients, the common name of all ingredients, provided that compliance with this act will not be impractical or deceptive, or results in unfair competition;

- (10) it claims to be for special dietary use and its label does not state vitamin, mineral and other dietary properties so that consumers may be informed as to real value of the product;
- (11) the labeling does not state the presence of artificial flavoring, artificial coloring, or chemical preservatives;
- (12) 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 ;
- (13) it is a color additive, and the packaging and labeling in conformity with the federal act provisions.

This section also outlines requirements for with fresh fruits and vegetables packaging, sausage, bakery products, and butter packaging. Basically, if it is customary for a food item to be re-packed or labeled by the retailer or first buyer, then the labeling requirements are loosened in accordance with customary practices in the industry.²⁹⁰⁷

Interpretation

An article may be alleged to be misbranded because the labeling is misleading or an advertisement false because it is misleading. To determine if the label or advertising is

²⁹⁰⁷ § 97.03.

misleading, representations made by words, devices, sounds, designs, or any combination thereof will be taken into consideration. The extent to which the label is misleading, or fails to reveal material facts will be considered, as will the conditions of normal use.²⁹⁰⁸

Rules

For the most part, all definitions are to conform to the federal Food, Drug, and Cosmetic Act. However, in the interest of public safety and honesty and fair dealing, the department has the authority to amend, create and adopt its own regulations. The department has the authority to issue temporary permits for the interstate shipment of experimental foods, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods. The department can also outline rules regarding organic foods.²⁹⁰⁹

Prohibited Acts

The sale of misbranded or adulterated food is prohibited, as is the manufacture, preparation, storage, or sale of food that hasn't been protected from filth, flies or other contamination. However, there is a good faith exemption for this section.²⁹¹⁰

Enforcement

The department has the authority to enter and inspect at reasonable times, any place where food is manufactured, held, processed, packed or packaged. The department and its agents

²⁹⁰⁸ § 97.07.

²⁹⁰⁹ § 97.09.

²⁹¹⁰ § 97.10.

may take samples and specimens of food, make copies of records, or secure other evidence necessary to determine whether there has been a violation of this act. The department shall offer to pay for samples taken.

If there is reasonable suspicion that the act has been violated, an order will be issued and delivered prohibiting the sale of the food. The holding period can be up to 14 days. No food so held may be moved without the department's permission. If there is no adulteration or misbranding determined, then the owner or custodian of the food shall be so notified. If the food is deemed to be adulterated or misbranded, then the owner or custodian shall be notified, and the food must be brought into compliance within 30 days. If not, the department may issue an order for the disposal of the food.

If there is a situation in which the department deems an imminent danger, then the department may act immediately for the health and safety of the citizens. Violations of this act are subject to fines and jail time. Also, anyone who attempts to assault, restrain or otherwise threaten or mislead a departmental agent with respect to this act is subject to a penalty and jail time.²⁹¹¹

Other Provisions

WIS. STAT. ANN. § 97.13: Regulating the sale of fish flour.

WIS. STAT. ANN. § 97.17: Licensing of buttermakers and cheesemakers.

WIS. STAT. ANN. § 97.175: Licensing of butter and cheese graders.

WIS. STAT. ANN. § 97.176: Grading and labeling of butter.

WIS. STAT. ANN. § 97.177: Grading and labeling of Cheese.

²⁹¹¹ § 97.12.

- WIS. STAT. ANN. § 97.18: Regulating the sale of oleomargarine.
- WIS. STAT. ANN. § 97.20: Licensing and permitting of dairy plants.
- WIS. STAT. ANN. § 97.21: Licensing and permitting of milk haulers and distributors.
- WIS. STAT. ANN. § 97.22: Licensing and permitting of milk producers.
- WIS. STAT. ANN. § 97.23: Allowances for drug residue in milk.
- WIS. STAT. ANN. § 97.24: Requirements for grading milk and milk products.
- WIS. STAT. ANN. § 97.27: Licensing of food warehouses.
- WIS. STAT. ANN. § 97.29: Licensing of Food processing plants.
- WIS. STAT. ANN. § 97.30: Licensing of retail food establishments.
- WIS. STAT. ANN. § 97.32: Appointments of special dairy and food inspectors.

Inspection of animals. poultry and carcasses

Definitions

“Animals” are cattle, sheep, swine, goats, horses, mules, and other equines.

“Poultry” means domesticated fowl.

“Unwholesome” means unsound, injurious to health, or otherwise rendered unfit for human food; consisting in whole or in part of any filthy, putrid, or decomposed substance; processed, packed, or held under unsanitary conditions, in which any part of the carcass becomes contaminated; produced in whole or in part from diseased animals or poultry, except when the disease does not make the carcass unfit for human food; or if the animal died otherwise than from slaughter.²⁹¹²

All slaughtering establishments must be licensed by the Department. To prevent the sale

²⁹¹² § 97.12.

or use of unwholesome meat products or poultry, both a premortem and postmortem state inspection must be conducted. Re-examinations are possible. Additionally, the Department has the authority to prescribe rules relating to slaughter and inspection practices. Moreover, the state inspection has an official labeling requirement.

Furthermore, the Department is authorized to tag any unfit equipment, facility or product. The tag cannot be removed without the Department's permission. Interference with an inspection or denial of entry to an establishment can result in a suspension of a license. Repeated violations can result in the denial, revocation or suspension of a license. However, custom slaughtering facilities and poultry farmers with sales of less than 1,000 birds and who process their own birds labeled "Note Inspected" are exempt from the above licensing and inspections requirements.²⁹¹³

Meat from diseased animals

No meat from diseased animals can be sold for human consumption, unless the disease does not normally render such meat unfit for human consumption. Nor can any carcass or part of an animal be fed to a food-producing animal unless the same is rendered or cooked thoroughly. Violations of this section are subject to fines and imprisonment.²⁹¹⁴

Meat for animal feed

Meat not intended for human consumption must be denatured or labeled as such, before it is transported, unless it is naturally inedible by humans.²⁹¹⁵

²⁹¹³ *Id.*

²⁹¹⁴ § 97.43.

²⁹¹⁵ § 97.44.

Horsemeat

Horsemeat must be labeled as such in order to sell such meat.²⁹¹⁶

Regulations on Sale of certain foods

WIS. STAT. ANN. § 97.46 outlines the sale or prohibition of sale of foods which contain certain substances such as anti-oxidants and preservatives.

WIS. STAT. ANN. § 97.47 prohibits the sale of meat or dairy products in which benzoic acid has been added.

WIS. STAT. ANN. §§ 97.50, 97.52 prohibits the sale and delivery of adulterated or insanitary milk or cream.

WIS. STAT. ANN. § 97.53 outlines the allowable additives to sausage or other chopped meat compound.

WIS. STAT. ANN. § 97.56 prescribes Wisconsin's standards for Kosher food.

Penalties

If a specific penalty is not outlined for a certain violation of a certain part of this act, then WIS. STAT. ANN. § 97.72 outlines applicable penalties. These include fines as well as imprisonment.

²⁹¹⁶ § 97.45.