

FALSE LABELING OF FOOD ORIGIN

House Bill 5071 (Substitute H-3*) First Analysis (10-15-97)

Sponsor: Rep. Mark Schauer
Committee: Agriculture

THE APPARENT PROBLEM:

In March of this year (1997), school children and school staff members in Calhoun and Saginaw counties began falling ill from Hepatitis A virus (HAV) infections. Eventually, the source of infection was traced to frozen strawberries provided to the schools through the federally-sponsored school lunch program. Though used in a federal program that requires that the food be from the United States, the company in southern California that processed, packed, and froze and distributed the strawberries used fruit grown and picked in Mexico. Just how and where the strawberries became tainted with HAV still is the subject of an ongoing investigation, but what is clear is that the company that sold the strawberries to the federal government for the school lunch program did so in violation of the federal requirement that school lunch program foodstuffs originate from within the United States.

THE CONTENT OF THE BILL:

The Michigan Food Law of 1968 prohibits certain actions with regard to the adulteration or mislabeling of commercial food and makes violations misdemeanors punishable by fines of \$100 to \$1,000 and/or imprisonment for up to 90 days.

The bill would prohibit, in addition, falsely identifying the origin of food on a label, tag, or other document with the intent to deceive or defraud. Violations of this prohibition would be a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,000.

The current violations in the act would remain misdemeanors with maximum and minimum fines of \$1,000 and \$100, but the bill would increase imprisonment to up to 93 (instead of 90) days.

The bill would take effect on March 1, 1998.

MCL 289.707 and 289.710

BACKGROUND INFORMATION:

Hepatitis A. Hepatitis A is a highly contagious liver disease caused by the hepatitis A virus (HAV), one of a group of strains of hepatitis viruses (currently identified strains include A, B, C, D, and E). Although HAV does not result in chronic infection (unlike, for example, the B, C, and D strains of the hepatitis virus), complete recovery from HAV infection can be slow, with full recovery taking up to six months, and up to 20 percent of people infected with "clinical" or "acute" HAV infection may be impaired for up to 15 months with what is called "prolonged" or "relapsing" HAV infection. Though unusual, hepatitis A infection ("fulminant" hepatitis) can even result in death, with a reported 0.4 percent mortality rate (approximately 100 deaths per year out of an average of 125,000 to 200,000 HAV infections per year).

Symptoms of people who become ill with HAV infection (and not all people do, especially young children who often are "asymptomatically" infected) can include fever and chills, nausea and vomiting, diarrhea, loss of appetite, abdominal pain and pain in the liver area, jaundice (yellowing of the whites of the eyes and of the skin), dark urine, and light-colored stools. People can spread the infection for about a week before their own symptoms appear, as well as during the first week of their symptoms, if any. Since the incubation period for hepatitis A can be from 15 to 50 days after exposure, infected people can spread the infection well before they are aware that they even have it.

Feces are the primary way ("vector") the virus is transmitted. Transmission of the virus generally occurs as the result of ingestion, by a susceptible person, of HAV shed in the feces of an infected person. Close personal contact is the most common mode of transmission, as demonstrated by the high rates of infection among household members and sex partners of infected people, and among children in day care center outbreaks. Food and water contaminated with fecal matter from an infected person also can transmit the virus: In food borne outbreaks, transmission is most often through uncooked foods such as unpeeled fruit, salads, or raw shellfish

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harvested from sewage-contaminated water. Waterborne outbreaks also have been reported in association with the drinking of fecally-contaminated water and with swimming in fecally-contaminated swimming pools and lakes.

Since there currently is not treatment for hepatitis A infection, the best "therapy" is prevention. Prevention can be accomplished through good hygiene (thorough hand washing after going to the bathroom or after changing diapers) and proper sanitation (clean water for drinking and hand washing, proper disposal of human feces). In addition, prior to infection, there now are two effective vaccines available for relatively long term (up to four years) prevention. And after exposure to the virus, administration of immune globulin (or Ig), which contains antibodies to the virus, can provide short-term (for 3 to 6 months) protection from the virus.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

As of September 8, 1997, there have been 304 cases of Hepatitis A infection reported in Calhoun County alone, with the onset of cases peaking last March at 186. As testimony before the House Agriculture Committee attested, the outbreak earlier this year inflicted an enormous toll of suffering on infected individuals -- most of whom were school children -- and their family members who subsequently became infected with this nasty virus. The extent of the pain and personal devastation suffered by some infected individuals was graphically illustrated by testimony before the committee given by a mother and her now 19-year-old son about the son's experience (another son and the father in the same family eventually also came down with symptoms of HAV infection). The son's resulting illness caused him not only severe and prolonged physical pain but also caused this high school football and basketball athlete to lose the last two months of his senior year in high school, including his being unable to participate in track or in his class' senior trip. This young man was in such excruciating pain that for a significant period of time he could not stand up without passing out from the pain, which included severe headaches, stomach pain with intense cramping, and terrible back pain and body aches. In addition, he suffered from vomiting and lost 20 pounds in a single week. Although he was hospitalized and put on intravenous therapy (which continued after he returned home), nothing could be given to him for the pain, since the virus affects the liver, the organ that metabolizes drugs, including painkillers. He also experienced hair

loss and the skin on the tips of his finger tips peeled off to the point where his fingers started bleeding and he was put on steroids and had to wear cotton gloves to protect his hands. Now, eight months later, this young man is in his first year of college, and still experiencing significant fatigue and frequent side and back pain. His brother, who also had eaten some of the infected strawberries through the school lunch program also fell ill, and although his symptoms were relatively milder than those of the first brother, they still included vomiting, weight loss, and stomach cramping so severe that he would double over and fall to the floor with the pain.

Surely unscrupulous companies -- such as the one in California whose food product was responsible for this outbreak of hepatitis A in Michigan last spring -- should be held responsible and suffer some kind of penalty for the enormous pain and suffering they cause in such cases. The bill would take a first step toward ensuring accountability by imposing criminal penalties for deliberately mislabeling the origin of commercial foodstuffs, and thereby hopefully providing a deterrent to future such outbreaks.

Against:

While the March school strawberry hepatitis A outbreak does indicate a need to strengthen safeguards on commercial and public food supplies, it is unclear whether the bill would do much to address this issue. In the first place, even had the bill been in place before last spring's hepatitis A outbreak, it would not have prevented the outbreak nor would it have penalized the California firm responsible for the contaminated fruit. For according to testimony before the House Committee on Agriculture, the strawberries that came into the state through the federal school lunch program were not labeled with their point of origin, so a law penalizing mislabeling wouldn't have caught the contaminated strawberries or penalized the California company for the outbreak. In fact, apparently it still is not known whether the strawberries were contaminated in Mexico -- where, presumably, sanitary conditions for field workers may not be adequate -- or in California during their processing. But in either case, merely labeling the point of origin would not have prevented the hepatitis outbreak in Michigan, since information on point of origin does not (at least in and of itself) provide information on whether or not foodstuffs so labeled are contaminated or not. Secondly, however, the bill would apply penalties only in cases where foodstuffs had been voluntarily labeled in the first place, and then only if the labeling of point of origin in fact was deliberately false. So although truth in advertising always is desirable, one unintended consequence of the bill could be to actually discourage voluntary labeling of point of origin, since mislabeling could be penalized. Perhaps labeling of point of origin should be made mandatory, not

voluntary; this way, at least, the consumer could decide whether or not he or she wanted to purchase foreign foodstuffs.

Other problems with the bill include the fact that the penalties are so modest -- a \$2,000 fine and/or 93 days imprisonment -- that they would do little to discourage large corporations from mislabeling the points of origin of their foodstuffs. In addition, by not having separate -- and much larger -- fines for corporate "persons," the bill could result in the imprisonment of low-level managers or other employees of corporations that violated the bill's provisions.

As testimony before the House Agriculture Committee indicated, what would be needed to better protect the public from future such outbreaks of illness from contaminated commercial and public foodstuffs are more government inspections and more testing of food for contamination all along the commercial food chain, from harvesting through processing, packaging, and marketing. In fact, the need to implement stronger regulations to prevent contaminated food from being distributed in the first place would seem to be particularly urgent in light of the reported five-fold increase in the importation of foreign fruits and vegetables alone since implementation of such federal treaties as NAFTA and GATT (since, presumably, many of the foreign nations from which food is imported have fewer adequate sanitary facilities for their food workers than are available in the United States).

Response:

With regard to the issue of mandatory labeling of point of origin, it should be pointed out that even if the federal government allowed this (that is, even if it didn't violate, for example, federal requirements regarding interstate commerce), such labeling could prove to be prohibitively expensive to, and practically impossible for, the food industry. With the ever-growing increase in international trade in foodstuffs, it would be virtually impossible for large food corporations to label the origins of all the foodstuffs they process and distribute. At the same time, it needs to be pointed out that the United States still has one of the safest commercial food markets in the world. In addition, consumers, while generally being able to rely on this regulatory safety net, also need to take responsibility for being responsible, sophisticated shoppers of the expanding availability of international foodstuffs. Finally, requiring mandatory labeling of point of origin of foodstuffs could result in irrational prejudices influencing consumers' food-buying patterns, without any objective basis in fact concerning the safety of foodstuffs from various countries. (In fact, some retail food chains are taking the initiative, in the private sector, to have their produce privately tested to insure its safety.)

POSITIONS:

The Department of Agriculture supports the bill. (10-14-97)

The Michigan Association for Local Public Health supports the bill. (10-15-97)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.