



**House
Legislative
Analysis
Section**

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FOOD LAW REVISIONS

**House Bill 5928 as enrolled
Public Act 487 of 2002
Second Analysis (7-3-02)**

**Sponsor: Rep. Ruth Johnson
House Committee: Agriculture and
Resource Management
Senate Committee: Farming,
Agribusiness, and Food Systems**

THE APPARENT PROBLEM:

Prior to the enactment of the Food Law of 2000 (Public Act 92 of 2000), food safety laws in Michigan were a patchwork of several laws, many of which overlapped or contradicted each other. The Food Law recodified and updated food safety regulations that had gone relatively unchanged for nearly three decades. In doing so, the Food Law streamlined, consolidated, and updated prior existing food safety laws; eliminated overlapping and conflicting provisions; and enacted provisions that placed greater emphasis on the prevention of foodborne illnesses. The Food Law also adopted several federal codes and regulations, including the 1999 Food and Drug Administration Food Code, the federal Good Manufacturing Practices for food processors, packers, wholesalers, and distributors, and several other regulations relating to specific food processes. The law has been in effect since November 8, 2000. In that time, there have been a few matters of concern and confusion that have arisen. Legislation has been introduced to address those concerns.

THE CONTENT OF THE BILL:

The bill would amend the Food Law of 2000 (Public Act 92) to allow the state to continue food service establishment inspections when a local health department discontinues such inspections; to clarify provisions relating to the disclosure of the hazards of foodborne illnesses; to eliminate certain overlapping provisions; and to make technical amendments.

Administrative Rules. The bill would change the references to “act” and “establishment” in the administrative code relating to food establishment. In the rules, “act” would mean the Food Law of 2000, which repealed the act currently referenced in the rules, the Michigan Food Law of 1968. Under current rules, “establishment” is defined to mean a place where food is manufactured, handled, stored, prepared, offered for sale, or sold. The term also

includes, among others, bakeries, bottling plants, grain elevators, frozen food plants, grocery stores, supermarkets, and gas stations. The bill would define “establishment”, as referenced in the rules, to mean “any farm crop storage where food is handled, stored, or prepared” and that is exempt from complying with certain FDA regulations (21 C.F.R. part 110).

Fees. The act requires applicants for a food service establishment license to pay certain state license fees (payable to a local health department), in addition to other fees required to be paid to the local health department. The bill would remove a \$2.50 state license fee for a mobile food service establishment. The act requires a state license fee of \$30 for a special transitory food unit. In addition, the act requires that a local health department impose a \$117 fee on a special transitory unit. The bill would specify that the \$117 fee imposed by the local health department includes the additional \$30 state license fee.

The act also requires the Department of Agriculture to impose certain licensure fees. The bill would eliminate a \$25 vending license fee. The bill would also impose a fee on food service establishments if a local health department discontinued a food service sanitation program. The department (which has the responsibility to conduct such a program if a local health department does not) would impose a fee equal to half of the department’s cost of providing that service. The department would be allowed to collect the fee for up to one year. After one year (for instance, if the department were to permanently take over the program), the department could impose a fee only in an amount set pursuant to an amendment to the act or as authorized in an appropriation.

In addition, the bill would exempt those veterans that have received an exemption from paying a license fee for selling their own goods pursuant to Public Act 359 of 1921, from paying those fees imposed by the Food Law of 2000.

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Fee-Exempt Food Establishment. The bill would define “fee-exempt food establishment” to mean a food establishment that is exempted from state and local food establishment license fees because it is either an educational institution (MCL 289.3119 [4]), or it is a nonprofit organization (MCL 289.3119 [5]) and it is exempted from the local health department sanitation service fee.

1999 Food Code. The act incorporates the FDA Food Code of 1999, with certain exceptions. The act modifies a provision in the code that pertains to the cooking temperature for certain roasts. The act modifies the sections so that the oven temperature for a high humidity oven is 66 degrees Celsius (130 degrees Fahrenheit). The bill makes an apparently technical amendment so that the temperature would be 54 degrees Celsius (130 degrees Fahrenheit). The bill would also make other technical modifications to the code.

Consumer Advisory. The Food Code requires that consumers be informed about the possible dangers of the consumption of raw, undercooked, or not completely processed animal food. To satisfy the requirements of the code, the act requires disclosure stating that an item contains raw or undercooked food of animal origin. The act states that the items could be described in such a manner to include the disclosure (such as “oysters on the half shell [raw oysters]”). The bill would add that the disclosure would not be limited to those items and that it includes items and descriptions of a similar nature.

The act lists four statements that may be used to remind consumers of the increased risk of eating raw or undercooked foods. The bill would delete the following statement: “[w]hen eating out or cooking at home, thorough cooking of foods of animal origin reduces the risk of foodborne illness. Contact your physician or public health official for further information”. The bill would retain the following notices:

- Regarding the safety of these items, written information is available on request.
- Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness.
- Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

The bill would add that the reminder requirement would be satisfied if either the second or third statement listed above appears at least once in the selection information (such as a menu) on the first interior page or the page where the first item that requires disclosure appears. Also, the word “notice” would have to appear before either statement. The reminder requirement would also be satisfied if the reminder is placed on a publicly placed placard and meets the following requirements:

- It is titled “notice” and contains either the second or third statement listed above.
- It is posted near the customer entrances and is clearly visible.
- All letters in the title are capitalized in bold, arial font and at least 44-point font size and, if menu items are also on the placard, all letters are equally readable as the menu items on the placard.
- All letters in the reminder are arial font and at least 36-point font size.
- The reminder is placed at approximately eye level.
- The reminder maintains visibility in layout, format, and graphics to other posted material.

Finally, the reminder requirement would be satisfied if the U.S. FDA model consumer advisory brochure is made available to the public.

The bill would allow the reminder notice to be tailored to a specific product if the food establishment either has a limited menu or offers only specific animal-derived foods in raw or undercooked, ready-to-eat form. Furthermore, the bill specifies that the language of the menu items would have to match the language used for the disclosure and reminder. However, the disclosure and reminder could also be in additional languages.

Repealed Sections. The bill would repeal sections 6119 (ventilation balance report), 6121 (ventilation test done at operating temperature), 6123 (smoke test performed on the ventilation system); and 6145 (frozen dessert standards) of the act.

MCL 289.1109 et al.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would result in a loss of about \$37,000 in state fee

revenue associated with the proposed fee exemption for veterans. This revenue is used to support the Department of Agriculture's Food and Dairy Division. The exemption would also decrease local revenue by approximately \$5,000 as the provision would prevent local health departments from assessing the license fee for special transitory units. This fee is retained by local health departments, as they perform the majority of the oversight activity associated with the transitory units.

In addition, the bill would increase state revenues by allowing the state to impose a fee on food service establishments if a local health department discontinued its food service sanitation program. This would occur only in the event that the state mandated the termination of a local food service sanitation program or as a result of a voluntary termination by the local health department. The fee imposed by the Department of Agriculture would be equal to half of the department's cost of providing the service. The other half of the department's cost would be borne by existing resources in the department's annual budget. A fee imposed by the department would be set for a year after termination of the local food service sanitation program. Following the first year of the fee, the department would be required to seek amendatory language to the Food Law or authorization in an appropriations act to continue to levy a fee. (5-28-02)

ARGUMENTS:

For:

Since the comprehensive rewriting of the state's food laws, a few concerns regarding the law have arisen. The bill would add language that would allow the Department of Agriculture to continue to conduct inspections of food safety establishments, if a local health department were to no longer do so. While the department has not taken over the duties of any local health department as of yet, this added provision ensures that inspections will continue without fail. Food safety is a paramount concern to the department. As such, the department should be prepared in the event that a local health department not be able to continue its responsibility for food safety inspections. This provides the department with the necessary resources and authority to continue the inspections, thereby protecting consumers for the possibility of contracting any foodborne illness.

In addition, the bill would clarify certain disclosure requirements for notifying consumers of the potential hazards of consuming raw or undercooked foods. For instance, the act requires that restaurant menus include the disclosure that a food item is, or can be, raw or undercooked. The act also provides examples such as "hamburgers (can be made to order)". The bill would add that the disclosure would not be limited to the items or the descriptions used as examples in that section. This clarifies any concern that may have arisen as to what items would have to be disclosed and how the disclosure would be worded. The disclosure provisions of the bill make it easier for restaurants and local health departments ensure compliance with these disclosure requirements. This ensures the consumers are indeed notified of the potential for contracting a foodborne illness when consuming raw or undercooked animal food products.

Furthermore, the bill would repeal certain sections of the Food Law that pertain to the regulation of ventilation equipment. Currently, the Department of Consumer and Industry Services regulates such equipment, and language in the act is not necessary.

Analyst: M. Wolf

■ 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.