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SFA**BILL ANALYSIS**

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House Bill 5928 (as passed by the House)
Sponsor: Representative Ruth Johnson
House Committee: Agriculture and Resource Management
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 5-22-02

CONTENT

The bill would amend the Food Law of 2000 to do the following:

- Revise licensing fees**
- Impose a fee on food service establishments if a local health department discontinued a food service sanitation program and the Michigan Department of Agriculture (MDA) performed the service instead.**
- Specify additional methods by which a food establishment could meet current disclosure and reminder requirements about raw and undercooked foods.**

Fees

The Law requires applicants for a food service establishment license to pay fees to the local health department, as well as a State license fee. (The bill would define "local health department" as it is defined in the Public Health Code, i.e., a county, district, or city health department, or any other local agency approved by the Department of Community Health). The bill would remove a \$2.50 State license fee for a mobile food service establishment. Also, a \$30 State license fee is imposed on a special transitory food unit. Local health departments, however, are required to charge a special transitory food unit a fee of \$117. The bill specifies that the \$117 fee would include the additional State license fee of \$30.

Currently, nonprofit organizations with tax-exempt status are exempt from paying fees, except for a vending machine location fee of \$2.50. The bill provides that nonprofit organizations would be exempt from paying the additional State license fee, except for the vending machine fee. In addition, the bill would add that a veteran who had a waiver of a license fee under the circumstances described in Public Act 359 of 1921 (for example, holding an honorable discharge from the armed forces and/or possessing a service-connected disability) would be exempt from paying the local and State fees.

The Law also requires the Michigan Department of Agriculture to impose certain licensure fees. The bill would eliminate a \$25 vending fee.

Further, the bill would impose a fee on food service establishments if a local health department discontinued a food service sanitation program and the MDA performed this service instead. The fees would have to equal, as nearly as possible, half of the Department's cost of providing the service. The bill states that the conduct of the services resulting from a cessation of a food service sanitation program would be considered an imminent or substantial hazard that would allow the MDA to impose the service fees for up to one year after the date of cessation by the local health department. After one year, the Department would have to collect the fees only

in an amount provided by amendment of the Law, or as authorized pursuant to appropriation.

Food Safety Education Funds

The Law provides for a Consumer Food Safety Education Fund and an Industry Food-Safety Education Fund, which are funded by the addition of \$3 and \$2, respectively, to the fee for each food establishment license in all categories except vending machines and in cases of fee-exempt food establishments.

The bill would define "fee-exempt food establishment" as a food establishment exempt from all State and local food establishment license fees because it was either 1) an educational institution or 2) a nonprofit organization that had an exemption from the local health department sanitation service fee.

Undercooked Food Advisory

The Federal Food Code requires that food establishments disclose to consumers the risks of consuming raw or undercooked food. To satisfy the requirements of the Code, the Law requires a disclosure or reminder, or both. The bill, instead, would require food service establishments to meet the requirements described below. The bill would define "disclosure" as "a written identification as to which items are, or can be, ordered raw or undercooked in their entirety, or items that contain an ingredient that is raw or undercooked". "Reminder" would mean a written notice concerning the significant health risk of consuming raw or undercooked animal foods.

Under the Law, a disclosure must state that an item contains raw or undercooked food of animal origin. The items may be described to include the disclosure, such as "oysters on the half shell (raw oysters)", "raw-egg caesar salad", and "hamburgers (can be cooked to order)". The bill would add the following example: "eggs (may be requested undercooked)". The bill states that the disclosure would not be limited to those items and descriptions, but would include items and descriptions of a similar nature. A disclosure also may be made by an asterisk with a footnote stating that the items are served raw or undercooked, or contain or may contain raw or undercooked ingredients.

The Law's reminder requirement is met if the raw or undercooked items are asterisked to a footnote that contains one of four statements. The bill would delete the following reminder: "When 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 three reminder statements:

- "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 the third statement above appeared at least once in the selection information on the first interior page, or the page where the first item requiring disclosure appears. Also, the word "notice" would have to appear before either statement.

In addition, a publicly available placard could supply the reminder of the significantly increased risk if it met the following requirements:

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

The reminder requirement also would be satisfied if the U.S. Food and Drug Administration model consumer advisory brochure, or its equivalent as determined by the MDA Director, were made available to the public.

The bill states that a reminder could be tailored to be product specific if a food establishment either had a limited menu or offered only specific animal-derived foods in raw or undercooked, ready-to-eat form.

Under the bill, the language for the menu items would have to match the language used for the disclosure and the reminder (which could be in additional languages, as well). The bill also includes color and font-size requirements that the text of disclosures and reminders would have to meet.

The bill would add that table tents, placards, or chalkboards used exclusively to list food items offered as daily, weekly, or temporary specials would be exempt from the requirements of this section of the Law when those food items also appeared in the primary selection information that contained the disclosure and reminders meeting the requirements of this section.

Administrative Rules

The Food Law of 2000 (Public Act 92 of 2000) repealed and replaced a number of laws regarding the sale of food and food service establishments. The Law also rescinded a number of related administrative rules. Except as rescinded, however, the rules promulgated under the repealed public acts retain their authorization under the Food Law.

For purposes of those rules, the bill would define the terms "act" and "establishment", notwithstanding R 285.553.1, which also defines those terms. Under the bill, "act" would mean the Food Law of 2000. (The rule presently refers to Public Act 39 of 1968, which was repealed.)

Under current rule, "establishment" is defined as 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, farm crop storages, frozen food plants, grocery stores, supermarkets, and gas stations. The bill would define "establishment", for purposes of the rules, as "any farm crop storage where food is handled, stored, or prepared and that is exempt from the requirements of section 7101" (which requires food processing plants to comply with certain FDA regulations).

Repealer

The bill would repeal sections of the Law dealing with a ventilation balance report (MCL 289.6119), a ventilation test at done at operating temperature (MCL 289.6121), a smoke test performed on the ventilation system (MCL 289.6123), and frozen dessert standards (MCL 289.6145).

FISCAL IMPACT

House Bill 5928 would result in a loss of State license fee revenue associated with the proposed fee exemption for veterans. This provision would decrease State revenues by about \$37,000. This revenue is used to support the Michigan Department of Agriculture's Food and Dairy Division. The exemption would decrease local revenue by approximately \$5,000 as the provision would prevent local health departments from assessing the license fee for special transitory units.

The bill would increase State revenues associated with the provision 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 Michigan Department of Agriculture would be equal to half of the Department's cost of providing that service. The other half of the MDA'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 MDA would be required to seek amendatory language to the Food Law or authorization in an appropriations act to continue to levy a fee.

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