

Legislative Analysis



FOOD PROCESSING STANDARDS: COMPLY WITH FEDERAL REGULATIONS

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**House Bills 4811 and 4812 as enacted
Public Acts 92 and 93 of 2018
Sponsor: Rep. Roger Victory
House Committee: Agriculture
Senate Committee: Agriculture
Complete to 6-20-18**

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4811 amends the Michigan Food Law, while House Bill 4812 amends the Michigan Feed Law. Both bills update state law to align with changes in federal law and rules governing food and feed processing made by the Food Safety Modernization Act (FSMA). The bills update references to Title 21 of the United States Code (21 USC) and Title 21 of the Code of Federal Regulations (21 CFR) to reflect the FSMA. House Bill 4811 would also amend a section of the Food Law in order to restore certain state food establishment license fees. This amendment is unrelated to the FSMA.

FISCAL IMPACT: The updated references to federal law made in both House Bills 4811 and 4812 would have no fiscal impact on state or local units of government. The changes made by House Bill 4811 related to state food establishment license fees would restore approximately \$70,000 in license fee revenue that was lost in FY 2016-17 as a result of a 2016 amendment to the Food Law. (See *Fiscal Information*, below, for further discussion.)

THE APPARENT PROBLEM:

The FSMA (Public Law 111-333), enacted in January 2011, amended the Federal Food, Drug, and Cosmetic Act (21 USC 301 et seq.). As described on the Federal Food and Drug Administration website, the FSMA represents “the most sweeping reform of our food safety laws in more than 70 years” and was intended “to ensure the U.S. food supply is safe by shifting the focus from responding to contamination to preventing it.” House Bills 4811 and 4812 update references in statute to reflect the FSMA.

In addition, House Bill 4811 corrects an apparent drafting error in a previous amendment of the Food Law that rolled back certain state food establishment licensing fees.

THE CONTENT OF THE BILLS:

House Bill 4811

Section 3119 of the Michigan Food Law currently establishes certain state food establishment license fees. These fees are in addition to fees assessed by local public health departments for inspection of food service establishments. Section 3119(6) currently directs the Michigan Department of Agriculture and Rural Development (MDARD) to annually adjust the state license fees based on the Detroit Consumer Price Index (CPI), not to exceed 5%. The current state fees were set by a 2007 amendment of the Food Law, effective January 1, 2008, and have been adjusted each year by the department in accordance with the provisions of Section 3119(6). However, the department indicates that a 2016 amendment of the Food Law by Public

Act 188 of 2016 effectively reset the fees back to 2008 levels, rolling back cumulative increases based on the Detroit CPI. The department indicates that this resulted in a reduction in fee revenue of approximately \$70,000 in FY 2016-17.

House Bill 4811 would amend Section 3119 by removing subsection (6), effectively eliminating the provisions requiring annual adjustment of the fees. The bill would amend the fees to reflect the cumulative increases made since 2009. The bill would also establish a sunset date for the fees—December 31, 2023. The fees would be changed as follows:

- Temporary food service establishment: from \$3.00 to \$4.00
- Food service establishment: from \$22.00 to \$25.00
- Mobile food establishment commissary: from \$22.00 to \$25.00
- Special transitory food unit: from \$35.00 to \$39.00

In addition, the amount a local public health department could charge for licensing a special transitory food unit would be reset from \$135.00 to \$150.00. [The state license fee for special transitory food units of \$39.00 is included in the \$150.00 fee.]

Section 7112 was added to the Food Law by Public Act 178 of 2012 to adopt, by reference, certain parts of 21 CFR dealing with food safety that were in effect on the effective date of Public Act 178 (i.e., October 1, 2012). House Bill 4811 retains the same references to 21 CFR, but would make the references to the parts as in effect on the effective date of House Bill 4811. This change would effectively update those references to include changes to 21 CFR effected by the FSMA.

Note that Section 7112(2) authorizes the MDARD director, by promulgation of a rule, to adopt any changes or updates to the referenced CFR parts. This provision is unchanged under House Bill 4811.

The bill would add a definition for *micro market*, which would then also be added to the existing definition of *vending machine location*. (That is, a micro market would be defined as a vending machine location for purposes of the Food Law.)

Micro market would mean an operation that does all of the following:

- Offers for sale commercially prepackaged foods properly labeled for individual sale, as required under Section 3-201.11(c) of the FDA Food Code, except as provided under Section 3-302.11(b)(1), and does not offer bulk food for sale.
- Uses an automated payment system.
- Controls the entry to the operation so that it is accessible only by a defined population and not by the general public.
- Limits consumer food preparation to heating or reheating food in a microwave oven.
- Uses continuous video surveillance, with sufficient resolution, of areas where consumers view, select, handle, and purchase food.
- If the operation uses a refrigerator or freezer unit, it only uses a unit that has both of the following features:
 - Self-closing doors that allow food to be viewed without opening the door.
 - An automatic self-locking mechanism that prevents the consumer from accessing the food if the refrigeration unit fails to maintain the internal

product temperature specified under Section 3-501.16(a)(2) of the Food Code or the freezer unit fails to maintain the food frozen.

House Bill 4811 is tie-barred to HB 4812, which means that HB 4811 could not take effect unless HB 4812 were also enacted.

MCL 289.1109 et al.

House Bill 4812

Currently, Section 4 of the Michigan Feed Law requires manufacturers, distributors, or guarantors of commercial feed to obtain licenses under the act. House Bill 4812 would amend subsection (2), which provides exemptions to the license requirements, to exempt a person who manufactures or distributes food or processed by-product as follows:

- It is food originally intended for human consumption.
- It is other processed by-product intended for use as animal feed that is not exempt from the definition of “commercial feed” under Section 3(g) and that is not “adulterated” as defined in Section 8.
- It is distributed only to a person holding a commercial feed license, who would be responsible for ensuring that the animal feed complies with the requirements of the act, including labeling under Section 5 and the inspection fee under Section 6.

The bill would further amend the Feed Law by revising Section 6, which requires a \$0.30 per ton inspection fee on commercial feed distributed in this state, to revise language that currently says a fee is not required if already paid by a previous distributor to provide that if more than one person is involved in the distribution of commercial feed, “the last person that is required to be licensed and that distributes to a nonlicensee is responsible for reporting the tonnage distributed and paying the inspection fee.”

The bill would revise Section 13 to update commercial feed compliance requirements by removing compliance with the “AFCO Model Good Manufacturing Practice Regulations for Feed and Feed Ingredients,” and replacing it with the federal requirements in 21 CFR Part 507 for Good Manufacturing Practices and Preventive Controls for Animal Food.

Finally, the bill would amend Section 14, which includes prohibited acts under the Feed Law, to revise the current prohibition of the reuse of bags, totes, or other containers for commercial feed unless the container is in, or on, a portable device and can be filled without entering the manufacturing facility. The bill replaces commercial feed with *animal feed*, and adds an additional exception if the container *has always been used and restricted to use within a commercial licensed facility*. (*Italic denotes changes from the original language.*)

MCL 287.523 et al.

FISCAL INFORMATION:

With respect to the amendments to update references to federal food safety law, the bills would have no fiscal impact on state or local units of government.

MDARD has administrative authority for food safety and quality assurance programs under Michigan's Food Law. MDARD's activities under this program are funded from an appropriation for Food Safety and Quality Assurance in the MDARD budget.

MDARD also has authority over an animal feed safety and agricultural products consumer protection program under the Feed Law. MDARD's activities under this program are funded from an appropriation for Pesticide and Plant Pest Management the MDARD budget.

The bills simply update references to federal law in state statute and do not significantly change MDARD's current activities under either the Food Law or the Feed Law.

It should be noted that MDARD has received additional budgetary support to help producers implement FSMA requirements. Specifically, in FYs 2016-17 and 2017-18, the MDARD budget included an additional \$300,000, and \$671,300, respectively, in state General Fund support to assist producers in implementing FSMA requirements.

In addition, in 2016 MDARD was awarded a Department of Health and Human Services, Food and Drug Administration (FDA) Cooperative Assistance Program grant to assist in implementing FSMA requirements. The FY 2016-17 MDARD budget recognized \$700,000 in grant funding; an additional \$1.1 million was recognized in the FY 2017-18 budget.

House Bill 4811 would also amend Section 3119(6) of the Food Law to effectively restore state food service inspection fees to reflect cumulative increases, since 2009, based on the Detroit CPI. The department indicates that this would restore approximately \$70,000 in annual food service fees, lost during FY 2016-17, for credit to the Dairy and Food Safety Fund.

ARGUMENTS:

For:

Supporters of the bills argue that the bills would allow MDARD to conduct inspections rather than the federal Food and Drug Administration. This will allow MDARD to educate food producers and processors under the law first instead of administering expensive sanctions. Inspections would also be uniform and streamlined.

Against:

No arguments were presented opposing the bills.

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