

FOOD PROCESSING STANDARDS: COMPLY WITH FEDERAL REGULATIONS

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House Bills 4811 (H-1) and 4812 as reported from committee
Sponsor: Rep. Roger Victory
Committee: Agriculture
Complete to 10-3-17

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

BRIEF SUMMARY:

House Bill 4811 would amend the Michigan Food Law, while House Bill 4812 would amend the Michigan Feed Law. Both bills would 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 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 FSMA.

FISCAL IMPACT:

The updated references to federal law made in both House Bills 4811 4812 would have no fiscal impact on state or local units of government. The changes made 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.

THE APPARENT PROBLEM:

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, 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 4812 update references in statute to reflect FSMA.

In addition, House Bill 4811 (H-1) 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 BILL:

House Bill 4811

Section 3119 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, Subsection 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 (Public Act 113 of 2007), 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, (2016 PA 188), 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 striking Subsection 6, effectively eliminating 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 on the fees – December 31, 2023. The fees would be reset 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 2012 amendment to the Food Law (2012 PA 178) to adopt, by reference, certain sections of 21 CFR dealing with food safety, in effect on the effective date of 2012 PA 178, i.e. October 1, 2012. House Bill 4811 retains the same references to 21 CFR, but would make the references to the sections in effect on the effective date of the act that amended Section 7112, i.e. House Bill 4811, as enacted. This change in the date references would effectively update those references to include changes to 21 CFR effected by FSMA.

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

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:

- Is originally intended for human consumption.
- 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.

- Is distributed only to a person holding a commercial feed license, who would be responsible for ensuring 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 update Section 13 to update commercial feed compliance requirements by deleting 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 Preventative 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*. (*Italics denotes changes from the original language.*)

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 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.

POSITIONS:

A representative from MDARD testified in support of the bills on 9-20-17 and indicated support on 9-27-17.

A representative from the Michigan Agri-Business Association indicated support for HB 4812. (9-27-17)

Legislative Analyst: Emily S. Smith
Fiscal Analyst: William E. Hamilton

■ 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.