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BILL ANALYSIS



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House Bill 4811 (Substitute H-1 as passed by the House)
House Bill 4812 (as passed by the House)
Sponsor: Representative Roger Victory
House Committee: Agriculture
Senate Committee: Agriculture

Date Completed: 2-27-18

CONTENT**House Bill 4811 (H-1) would amend the Food Law to do the following:**

- Increase the additional State license fees for various food service establishment licenses, and provide for the fees to sunset on December 31, 2023.
- Eliminate a requirement that the Michigan Department of Agriculture and Rural Development (MDARD) adjust the license fees on an annual basis to reflect the change in the Detroit consumer price index.
- Adopt by reference Federal regulations as set forth on the bill's effective date, instead of as set forth on October 1, 2012.

House Bill 4812 would amend the Feed Law to do the following:

- Specify that a person who manufactured or distributed food that was originally intended for human consumption or other processed byproduct that was intended for animal feed, and met other requirements, would not have to obtain a commercial feed license.
- Require the product name for each commercial feed used in a customer-formula feed to be included in information sent to the purchaser.
- Specify that if more than one person were involved in the distribution of commercial feed, the last person that was required to be licensed and that distributed to a nonlicensee would be responsible for reporting the tonnage distributed and paying the inspection fee.
- Modify the Federal regulations with which a person manufacturing or distributing commercial feed must comply.
- Exclude from a prohibition related to reusing animal feed containers, a container that had always been used and restricted to use within a commercial licensed facility.

The bills are tie-barred to each other.

House Bill 4811 (H-1)**Food Service Establishment License Fees**

Under the Food Law, except as otherwise provided for a special transitory food unit, upon submitting an application, an applicant for a food service establishment license must pay to the local health department having jurisdiction any fee required under Section 2444 of the Public Health Code. (Section 2444 allows a local governing entity or district board of health

to fix, and require the payment of, fees for services to be performed by a local health department.) The applicant also must pay an additional State license fee as follows:

- Temporary food service establishment, \$3.
- Food service establishment, \$22.
- Mobile food establishment commissary, \$22.
- Special transitory food unit, \$35.

The bill would increase the additional fees, as follows:

- Temporary food service establishment, \$4.
- Food service establishment, \$25.
- Mobile food establishment commissary, \$25.
- Special transitory food unit, \$39.

Under the bill, the requirement to pay the fees would apply until December 31, 2023.

When licensing a special transitory food unit, a local health department must impose a \$135 fee, which includes the additional State license fee unless otherwise exempted. The bill would increase this fee to \$150.

The Act requires the Department to adjust the above fees on an annual basis by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index. The bill would eliminate this requirement.

Adoption of Federal Regulations

The Law adopts by reference 21 CFR Parts 1, 70, 73, 74, 81, 82, and 100 to 199, as set forth on the October 1, 2012, except to the extent that provisions of the Law and rules promulgated under it specify different requirements. Under the bill, those Federal regulations would be adopted by reference as set forth on the bill's effective date. (These Federal regulations pertain to food safety, and were modified with the enactment of the Federal Food Safety and Modernization Act in 2011.)

House Bill 4812

Commercial Feed License; Exceptions

Under the Feed Law, subject to exceptions, the following must obtain a commercial feed license:

- A commercial feed manufacturer, for each facility in the State used to manufacture commercial feed.
- A person, other than a manufacturer, that distributes commercial feed within the State or serves as guarantor of commercial feed distributed within the State.

The following are not required to obtain a license:

- A person that makes only retail sales of commercial feed that contains labeling or another approved indication that the feed is from a licensed manufacturer, distributor, or guarantor that has assumed full responsibility for the inspection fee.
- An on-farm mixer-feeder, if the person is not distributing feed commercially.
- An integrated operator that does not distribute feed commercially.

The bill also would make an exception to the license requirement for a person that manufactured or distributed food that was originally intended for human consumption or other processed byproduct that was intended for animal feed, was not exempt under Section 3(g), and was not adulterated, and distributed the food or other processed byproduct only to a person that held a commercial feed license. The commercial feed licensee would be responsible for ensuring that the animal feed complied with the Law's requirements, including labeling and the inspection fee. (Section 3(g) defines "commercial feed" and excludes certain items from the term.)

Customer-Formula Feed Documents

The Law prescribes requirements for the labeling of commercial feed, including a customer-formula feed. ("Customer-formula feed" means commercial feed that consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser or purchaser's agent.)

Certain information related to customer-formula feed must be sent to the purchaser upon delivery, or within one business day, by electronic means, such as electronic mail or facsimile. This information includes the quantity statement for each commercial feed and each other ingredient used in the mixture. The bill also would include the product name for each commercial feed and other ingredients.

Inspection Fee

The Law requires an inspection fee of \$0.30 per ton to be paid on commercial feed distributed in the State by the person whose name appears on the label as the manufacturer, guarantor, or distributor. A person other than the manufacturer, guarantor, or distributor may assume responsibility for the inspection fee, subject to certain restrictions. These include a provision under which a fee may not be paid on a commercial feed if the payment has been made by a previous distributor. Under the bill, instead, if more than one person were involved in the distribution of commercial feed, the last person that was required to be licensed and that distributed to a nonlicensee would be responsible for reporting the tonnage distributed and paying the inspection fee.

Compliance with Regulations

The Law requires a person manufacturing or distributing commercial feed to comply with certain regulations, including the "AAFCO [Association of American Feed Control Officials] Model Good Manufacturing Practice Regulations for Feed and Feed Ingredients", which apply in determining whether a commercial feed is adulterated, or has been produced or held under unsanitary conditions. The bill would eliminate this provision.

The bill would require a person manufacturing or distributing commercial feed to comply with the requirements in 21 CFR Part 507 for good manufacturing practices and preventative controls for animal food.

(Title 21 of the Code of Federal Regulations governs food and drugs. Part 507 is titled, "Current Good Manufacturing Practice, Health Analysis, and Risk-Based Preventive Controls for Food for Animals".)

Prohibited Acts

The Law prohibits a person from engaging in various conduct with respect to commercial feed, including reusing bags, totes, or other containers for commercial feeds, including customer-

formula feeds, unless the container is in, on, or upon a portable device and can be filled without entering the manufacturing facility. Under the bill, a person would be prohibited from reusing bags, totes, or other containers for animal feed, including customer-formula feeds, unless the container had always been used and restricted to use within a commercial licensed facility, or was in, on, or upon a portable device and could be filled without entering the manufacturing facility.

MCL 289.3119 et al. (H.B. 4811)
287.523 et al. (H.B. 4812)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4811 (H-1)

The bill would amend the Food Law to adjust State food service inspection fees to reflect cumulative increases, since 2009, based on the Detroit CPI. According to MDARD, 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.

House Bill 4812

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.