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BILL ANALYSIS

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House Bill 5196 (Substitute H-2 as passed by the House)
Sponsor: Representative Ruth Johnson
House Committee: Health Policy
Senate Committee: Agriculture

Date Completed: 3-29-00

CONTENT

The bill would create the "Food Law of 2000" to consolidate and revise current State laws regarding the sale of food, including its manufacture, production, processing, and packing; holding food for sale; and the service of food by food service establishments, and by doing the following:

- Adopting by reference the Federal Food and Drug Administration 1999 Food Code.
- Establishing four categories of licensing for mobile and temporary food service establishments.
- Establishing an April 30 expiration date for licenses, except for a license for a temporary food establishment.
- Create the "Consumer Safety Education Fund" to provide statewide training and education to consumers on food safety.
- Permit a licensee to implement practices and procedures alternative to those in the Food Code on handling ready-to-eat foods with bare hands.
- Specify that conditions warranting administrative fines would be limited to critical or repeated violations that were uncorrected beyond an approved or ordered time frame.
- Provide a decision or order in a contested case would be subject to court review when a licensee was aggrieved by a final decision and had exhausted all administrative remedies.
- Repeal and rescind certain Acts and rules concerning food service establishments.

The bill would take effect six months after its date of enactment. Until six months after the bill's effective date, compliance with the standards of design, construction, and equipment of a food service establishment approved under the Public Health Code, as specified in the bill, would be considered compliance under the bill.

Federal Food Code

The bill would incorporate by reference the Federal Food Code, except where provisions of the proposed Food Law and rules promulgated under it specified different requirements. The Director of the Michigan Department of Agriculture (MDA) could, by promulgation of a rule, adopt any changes or updates to the Food Code. The bill specifies that the annexes of the Food Code would be considered persuasive authority for interpretation of the Food Code.

Retail Grocery Store

Currently, a retail grocery store is licensed and inspected by the MDA, and restaurants are licensed and inspected by a local health department. In addition, some establishments are required to be licensed by the Department and by the local health department, and are subject to inspections by both agencies.

Under the bill, when a retail grocery or food processing plant was a part of a food service establishment but the food service establishment was the predominant part of the food business as determined by the MDA, the authority and responsibility for the entire establishment would be delegated, as provided under the bill.

Food Service Establishments

Beginning six months after the bill's effective date, a food service establishment would have to comply with the standards of design, construction, and

equipment under the bill.

The MDA would be required to delegate responsibility for the enforcement of the requirements pertaining to food service establishments to local health departments meeting the program criteria of the bill and rules promulgated under it. The local health department would be required to enforce the bill and rules and could delegate enforcement authority under an organization approved pursuant to the Public Health Code. If a food service program were discontinued or were revoked for failing to meet the program criteria, redelegation to a local health department by the program director would not be required.

The bill would define "food service establishment" as "a fixed or mobile restaurant, coffee shop, cafeteria, short order café, ...tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public." The term does not include the following:

- A motel serving continental breakfast only.
- A food concession (at a State or county fair).
- A bed and breakfast with 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, one or more of which are available for rent to transient tenants.
- A bed and breakfast with at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only.
- A regulated child care organization, unless it is carrying out an operation considered by the MDA Director to be a food service establishment.

Mobile and Temporary Food Service Establishments

Currently, mobile and temporary food service establishments are licensed under seven categories, such as a fair concession, a mobile food service establishment, or a transitory food unit. The bill would establish four categories of licensing: a mobile food establishment (a food establishment operating from a vehicle or watercraft that returned to a licensed commissary for servicing and maintenance at least once every 24 hours); a temporary food establishment (a food establishment that operated at a fixed location for a temporary period of not more than 14 days); a special transitory food unit (a temporary food establishment that was licensed to operate throughout the State without the 14-day limit or a mobile food establishment that was not required to return to a commissary); and, limited retail food establishments. ("Retail food establishment" would mean an operation that sold or offered to sell food directly to a consumer, and would include both a retail grocery and a food service establishment, but would not include a food processing plant.)

The bill also would expand the exemption for temporary food establishments with no food preparation that used only single-service articles and served only non-potentially-hazardous food or beverage to include grocery stores with packaged foods.

Fixed Location Establishments

Currently, licenses for food establishments with fixed locations are based on size of the establishment and whether or not food service is offered. Under the bill, licensing would be based on the establishment's operation. The licensing categories would be as follows: a retail food establishment, an extended retail food establishment, a food processor, a mobile food establishment commissary, and a food warehouse.

("Extended retail food establishment" would mean a retail grocery that served or provided an unpackaged food for immediate consumption and provided customer seating in the food service area. "Food processor" would mean an operation that processed, manufactured, packaged, or labeled food and provided the food other than directly to consumers. "Mobile food establishment commissary" would mean an operation that was capable of servicing a mobile catering food establishment. "Food warehouse" would mean a food establishment that stored or distributed prepackaged food other than directly to consumers.)

The bill would add to the list of establishments already exempt from licensure requirements: a produce stand that offered only whole uncut fresh

fruits and vegetables, and a retail food establishment that only sold prepackaged, non-potentially-hazardous foods, and offered only an incidental amount of food, such as the sale of single-service packages.

Licenses and Fees

Under the bill, a license, other than a license for a temporary food establishment, would expire yearly at midnight on April 30. The MDA could issue a temporary food license for a period of up to 14 days. The Department would be required to impose the following license fees for each year or portion of a year: \$67 for retail food establishments; \$172 for extended retail food establishments, food processors, mobile food establishments, and mobile food establishment commissaries; \$25 for vending and temporary food establishments; \$117 for special transitory food units; and \$67 for food warehouses.

The bill also would require an applicant for a food service establishment license to pay to the local health department having jurisdiction the required sanitation service fees authorized under the Public Health Code and an additional State license fee as follows: \$2.50 for a vending machine location, a temporary food service establishment, and a mobile food service establishment; \$19 for a food service establishment and a mobile food establishment commissary; and \$30 for a special transitory food unit.

Education Fund

The bill would create the Consumer Safety Education Fund as a revolving fund in the Department of Treasury. The Fund would be administered by the Department and funded by the addition of \$3 to the fee for each food establishment license in all categories except vending machines and in cases of fee-exempt food establishments. The money in the Fund would have to be used to provide statewide training and education to consumers on food safety. An advisory committee consisting of at least nine people representing consumers, industry, government, and academia would have to advise the MDA on the use of the funds.

The bill also would create the "Industry Food-Safety Fund" as a revolving fund in the Department of Treasury. The Fund would have to be administered by the MDA and funded by the addition of \$2 to the fee for each food service establishment licensed in all categories except vending machines and in cases of fee-exempt food establishments. The money in the Fund would have to be used to provide food safety training and education to food service establishment employees and agents of the Director who enforced the Food Law. The advisory

committee created above would have to advise the MDA on the use of the funds.

Money remaining in either Fund at the end of the fiscal year would have to be carried forward into the next fiscal year.

Bare-Hand Contact

Under the Food Code, food employees, except under certain circumstances, may not touch with their bare hands ready-to-eat foods and are required to use suitable utensils. Under the bill, before a license holder implemented alternative practices and procedures to those in the Food Code, the license holder would have to do all of the following: evaluate alternatives to bare-hand contact and determine them to be impractical; meet the critical requirements of the Food Code that were necessary for the implementation of alternatives to the Code as allowed under the bill; and, implement a documented food safety training program for all employees having bare-hand contact with ready-to-eat foods. The bill specifies topics to be included in the training program, and would require the training to be given to new employees and a refresher training be given to any employee having bare-hand contact with ready-to-eat foods. The license holder would have to implement a documented plan to monitor employees periodically to ensure that the practices and procedures were being followed. A license holder also would have to review its operations periodically, verify the effectiveness of the alternative practices, and monitor when ready-to-eat foods were handled by employees.

Upon request of the Director, a license holder would have to identify any ready-to-eat foods that would be contacted with bare hands, as well as the specific location and method for preparation. Documentation required under the bill would have to be readily available at the retail food establishment for use by the person in charge and review by the Director, but would not have to be approved by the Director before implementation. The Department would have to provide guidance to retail food establishments on the documentation of these alternatives and could require the modifications or suspension of existing alternative practices and procedures if it determined there was a threat to public health.

Penalties

The bill would consolidate penalty sections of various food laws and retain current prohibitions. The bill also would make it unlawful to remove a tag, seal, or mark placed by the Director on a food that was unsafe for consumption; make a false statement, representation, or certification in any application, report, plan, or other required documentation; fail to

establish or maintain any record or make any report required under the bill or the Federal Food, Drug, and Cosmetic Act; or refuse access to or verification or copying of any required record.

Upon finding that a person violated a provision of the bill or a rule promulgated under it, the Department could impose an administrative fine of up to \$500 for the first offense and up to \$1,000 for a second or subsequent offense and the actual costs of investigation of the violation. Each day of any continuing violation would not be considered a separate violation of the bill or a rule promulgated under it. Under no circumstances could the Department impose upon any licensee or registrant administrative fines in the aggregate amount of more than \$4,000 per location for a firm with annual gross receipts of \$500,000 or less or \$8,000 per location for a firm with annual gross receipts of over \$500,000 during any 12-month period. Any administrative fines and costs collected under the provisions would have to be paid to the State Treasury and credited to the General Fund. The bill specifies that these provisions would not require the MDA to issue an administrative fine for minor violations whenever the Department believed that the public interest would be adequately served under the circumstances by a suitable written notice of warning.

The conditions warranting administrative fines to achieve compliance with the Food Code would be limited to critical or repeated violations that remained uncorrected beyond the time frame for correction approved, directed, or ordered by the Director under the Food Code. The MDA could not impose an administrative fine for a noncritical violation of the Food Code unless at least 30 calendar days had been allowed for correction after the inspection.

The bill specifies that the regulatory authority (the MDA, the local health department, or the authorized representative having jurisdiction over the establishment) would have to apply justly the remedies according to law and the bill consistent with the licensee's right to due process. In addition, when a license holder or registrant had exhausted all administrative remedies available under the bill and was aggrieved by a final decision or order in a contested case, the decision or order would be subject to direct review by the courts as provided by law.

Other Provisions

The Director could require certain individuals to complete manager food safety training for that food establishment, after a conference with the owner of a retail food establishment for a repeated failure to correct a critical violation.

The bill would adopt by reference specific Federal

regulations concerning the following: food processing plants and the refrigeration of potentially hazardous food; the packaging of acidified and low-acid foods, and the operation of a bottled water plant. The bill also would require that packaged foods be labeled as specified in Federal rules and required under the Food Code. In addition, the bill specifies how provisions of the Food Code on the handling of raw or undercooked food of animal origin, would be satisfied.

The bill would prohibit a person from keeping or displaying any canned meats or canned meat products at a temperature exceeding 41 degrees Fahrenheit if the label of the meat or meat products specified that they had to be kept under refrigeration.

Packaged food would have to be labeled as specified in Federal rules and in the Food Code.

The bill would require that the exhaust ventilation of a food establishment be designed, constructed, and installed in compliance with applicable State law.

The bill would provide for the creation of a retail food advisory board within the MDA to advise the Director on the implementation of the bill.

The bill would revise the definition of "bed and breakfast" to specify that a bed and breakfast would not be considered a food establishment if it were exempt under the bill's definition of "food service establishment". In addition, the revised definition of "bed and breakfast" would delete reference to a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor.

Repealers

The following Acts and parts of Acts would be repealed six months after the bill's date of enactment: Public Act 384 of 1913, which regulates the manufacture and sale of vinegar (MCL 289.551-289.559); the Michigan Comminuted Meat Law (MCL 289.581-289.592); Public Act 166 of 1957, which prohibits the false advertising of meat and meat products (MCL 289.261-289.268); the Michigan Food Law of 1968 (MCL 289.701-289.727); and, the Food Processing Act of 1977 (MCL 289.801-289.810).

In addition, sections of the Public Health Code concerning the following would be repealed six months after the bill's enactment: definitions pertaining to food service establishments (MCL 333.12901); wild game preparation for meetings and fund-raising events (MCL 333.12902); the food service advisory board (MCL 333.12903); licensure to operate a food service establishment, transitory food unit, temporary food service establishment, or vending machine location (MCL 333.12904); display

of posters of antichoking techniques in food service establishments (MCL 333.12905a); payment of sanitation service fees and additional State license fees (MCL 333.12906); denial, suspension, limitation, or revocation of licenses (MCL 333.12907); delegation of enforcement to local health departments (MCL 333.12908); transitory food unit facilities and equipment (MCL 333.12910); plans and specifications for construction, remodeling, or alteration of food service establishments (MCL 333.12911); investigation of food-borne diseases and poisonings (MCL 333.12912); prohibited storage or application of sulfiting agents (MCL 333.12913); required notification of the Department by certain food service establishments, delicatessens, or bakeries (MCL 333.12916); and injunction to restrain or prevent operation of a food service establishment or a vending machine location without a valid license (MCL 333.12921).

Except as rescinded, rules promulgated under the Acts repealed by the bill would retain authorization under the bill. Administrative Code rules pertaining to the following would be rescinded six months after the bill's enactment: egg breaking (R 285.538), nonalcoholic beverages (R 285.549), last date of sale for perishable food (R 285.554), food concessions at State and county fairs (R 285.556), food establishment licensing (R 285.557), and temporary food establishments (R 285.558).

In addition, rules regulating food service sanitation, including those rules pertaining to certain general provisions, MDA and local health department program requirements, procedures and evaluations, ice used in food service establishments, temporary and mobile food service establishments, food service establishment construction and remodeling plans and specifications, licensing of food service establishments or vending machine locations, surveillance and inspections, and exhaust ventilation requirements (R 325.25101-325.26008) would be rescinded six months after the bill's enactment.

Beginning six months after the bill's date of enactment, a rule pertaining to the construction, equipment, facilities and sanitation operations of a food service establishment (R 285.553) would not apply to any food establishments under the bill except for any farm crop storage exempt from regulations under the bill.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would result in an increase in State licensing

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fee revenue and in administrative costs. The fee increases contained in the bill would generate approximately \$630,000 in new license revenue annually, bringing total licensing fees for retail processing establishments to nearly \$1,600,000. In addition, the \$3 fee added to each food establishment license would generate between \$150,000 and \$165,000 per year; and the \$2 fee added to each food service license would generate approximately \$75,000 per year.

The Department estimates that the increase in administrative, training, and inspection costs associated with the provisions of the bill would be approximately \$1,250,000 annually. The consumer education and local health department and industry training portions of these costs would be covered by the \$3 and \$2 fees added to food establishment and food service licenses.

Fiscal Analyst: P. Graham