



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bill 122 (as passed by the Senate)  
Sponsor: Senator Margaret E. O'Brien  
Committee: Agriculture

Date Completed: 5-30-17

### **RATIONALE**

Generally, the Food Law prohibits a person from bringing a live animal, including a dog, onto the premises of a food service establishment. The presence of a live animal at a restaurant is perceived as a risk because of possible spread of zoonoses (diseases that can be transmitted to humans from animals) or other contamination, potential injury to patrons or restaurant employees, or damage to the restaurant. While acknowledging these concerns, some people view dogs as members of the family, and some enjoy taking their dogs with them to public places, or find it convenient to do so while traveling. There is interest in allowing dogs to accompany restaurant patrons as a way to increase business at local restaurants or promote Michigan as a dog-friendly tourist destination. Thus, it has been suggested that the Food Law should allow dogs in a restaurant's outdoor dining areas under certain circumstances.

### **CONTENT**

**The bill would amend the Food Law to do the following:**

- **Allow a customer's dog in an outdoor dining area of a food service establishment if a health or safety hazard would not result from the dog's presence or activities, and the establishment met certain requirements.**
- **Allow a local unit of government to adopt and enforce an ordinance that was more restrictive than the bill's provisions.**
- **Permit a food service establishment to deny entry to a customer and his or her dog, determine the space allowed for a dog, and establish other limits.**
- **Include in the definition of "core item" the bill's requirements pertaining to a dog permitted in outdoor dining areas (limiting the imposition of an administrative fine for violation).**

The bill would take effect 90 days after its enactment.

#### **Dogs Permitted in Outdoor Dining Area**

The Law incorporates by reference Chapters 1 through 8 of the Food Code, 2009 Recommendations of the Food and Drug Administration (FDA) of the United States Public Health Service. (The Food Code is a model act representing the FDA's recommended best practices for addressing food safety and the regulation of food establishments.) Generally, the Food Code provides that live animals may not be permitted on the premises of a food establishment. However, Section 6-501.115(B) specifies that live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result:

- Edible or decorative fish in aquariums, and shellfish or crustacea on ice or under refrigeration or in display tank systems.

- Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas.
- Service animals.
- Pets in common dining areas of institutional care facilities, e.g., nursing homes or assisted living facilities, at times other than during meals if several conditions are met.
- In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged or confined animals.

The bill also would allow a dog that was controlled by a customer in an outdoor dining area of a food service establishment if a health or safety hazard would not result from the dog's presence or activities, and if all of the conditions described below were met.

The dog could not pass through the interior, or any playground area, of the establishment to enter the outdoor dining area. A separate entrance would have to be provided from the exterior of the food service establishment to the outdoor dining area.

The dining area would have to be maintained free of visible dog hair, dander, and other related waste and debris, and would have to be cleaned and disinfected appropriately as needed.

Surfaces contaminated by waste created from the dog's bodily functions would have to be cleaned and disinfected immediately, and equipment used to clean dog waste would have to be stored separately from all other cleaning equipment and could not be used for other cleaning purposes. All dog waste would have to be disposed of at least daily outside of the food service establishment in a covered waste receptacle.

An employee who touched the dog or cleaned dog waste could not serve food or beverages or handle tableware until he or she had washed his or her hands.

The dog would not be allowed on a seat, chair, or customer's lap, or allowed to contact a tabletop, countertop, or similar surface in the outdoor dining area. The dog would not be allowed to contact reusable tableware unless the tableware was dedicated to use by dogs and readily distinguishable as such or was provided by the person handling the dog.

The dog would not be allowed in an area where food was prepared.

The dog could not be unattended, and the customer would have to keep the dog on a leash. The customer would have to be at least 18 years of age.

In addition, the owner of a dog brought into the food service establishment would be liable for any damage or injury to the establishment, an employee, or a customer caused by the dog.

#### Written Procedures & Notice

A food service establishment would have to maintain and make available to the regulatory authority or a customer upon request written procedures that ensured compliance with the bill's requirements. Before allowing a dog within the establishment, it would have to provide written notice to the local health department that it intended to allow customers' dogs to accompany customers in its outdoor dining area. The establishment would have to mail the notice by first-class mail or deliver it at least 30 days before allowing dogs to accompany customers. The notice would be effective while the establishment remained in business, and it would not have to mail or deliver more than one notice.

The food service establishment could do any of the following: a) determine the location and amount of space designated for a customer accompanied by his or her dog, b) establish a limit on the size and type of dog and any other limitation relating to a customer's dog, and c) deny entry to or reject from the food establishment a customer and his or her dog.

## Local Ordinance

The Law prohibits a county, city, village, or township from regulating those aspects of food service establishments or vending machines that are subject to the Law except to the extent necessary to carry out a local health department's responsibility to implement the Law's licensing provisions. Under the bill, a local unit of government would be permitted to adopt and enforce an ordinance that was more restrictive than the bill's provisions.

## Core Items

The Law defines "core item" as a provision in the Food Code that is not designated as a priority item or priority foundation item. Core items include the following: a) an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures, facilities, or structures, equipment design, or general maintenance; and b) the requirements of Sections 2129(2) and 6152 (which pertain to requirements for a certified food safety manager to complete a food safety training component with an allergen awareness component and for a food service establishment to display a poster relating to food allergy awareness, respectively).

The bill also would include as a core item its requirements pertaining to dogs permitted in an establishment's outdoor dining area.

(For violations of the Law or rules promulgated under the Law, the Department of Agriculture and Rural Development may impose an administrative fine of at least \$500 for the first violation and up to \$1,000 for each subsequent violation, with aggregate maximum fines depending on the firm's annual gross receipts. The Law prohibits the imposition of an administrative fine for violations of the Food Code other than priority items (provisions contributing directly to elimination or prevention of hazards associated with foodborne illness or injury, e.g., hand washing), priority foundation items (provisions that support, facilitate, or enable a priority item, e.g., personnel training or record keeping), or repeated violations that remain uncorrected beyond the time frame specified or agreed to by the Department. The Department may not impose an administrative fine for a core item violation unless the violation is not corrected within 30 days of an evaluation.)

MCL 289.1105 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would allow a restaurant to permit a patron to bring a dog to the restaurant's outdoor seating area. Other states, such as Florida and New York, allow dog owners to do so. The bill could encourage tourists to come to Michigan, as some reportedly bring their dogs with them only to find that State law prohibits dogs from restaurants. Dog-friendly restaurants also could cater to dog-owning residents, and some restaurants already do. When a person is traveling with a dog, either as a tourist or out of necessity, he or she may find it very difficult to find a place to eat and would welcome the opportunity to bring the dog to a restaurant's patio. In fact, considering the risks of leaving a dog in a locked car, this may be more than a matter of convenience. Some restaurants already permit people to bring their dogs to an outdoor seating area, or otherwise do not discourage the practice.

The bill's provisions are not compulsory insofar as restaurants would not be required to let dogs onto the premises and in some places could be prohibited from doing so. First, a local government could adopt an ordinance preventing restaurants under its jurisdiction from allowing dogs. Second, each restaurant situated in an area where dogs were permitted would have the final decision on whether to allow dogs onto the premises, and could choose to exclude or eject certain dogs and their owners. Those restaurants that did allow dogs would be responsible for carrying any additional coverage required by their insurance provider and would have to follow applicable State

law and local ordinances. Accordingly, the bill would balance the various preferences of consumers and restaurant owners, and the desire for local control over public health policy.

### **Opposing Argument**

Generally, current law does not allow dogs that are pets in a restaurant. This restriction serves several public health purposes, namely, increased sanitation and safety. Under the Food Code, however, a local health department may grant a variance from the Code's general prohibition against dogs if, in its opinion, a health hazard or nuisance would not result from the variance.<sup>1</sup> The possibility of requesting a variance makes this bill unnecessary.

Also, compared with the risk of injury and potential impact on public health, the benefits of allowing dogs on a restaurant's patio would be relatively minor and unjustified. According to the Centers for Disease Control and Prevention, approximately 4.5 million dog bites occur each year in the United States. Reportedly, around 885,000 bite victims seek medical attention, and 386,000 of them are treated in an emergency room. In roughly 18% of dog bite cases, potentially harmful bacteria are transmitted. The presence of a dog in a restaurant increases the likelihood of a dog bite injury and its complications. This is especially true where a dog might be distracted or provoked by the presence of food, another dog, other people, or other stimuli outside of the dog's normal experiences. Instances of dog bites occurring in restaurants have been reported. For example, in 2012, a waitress at a Miami Beach restaurant was attacked by a dog while attempting to bring it a bowl of water.<sup>2</sup>

**Response:** The ability to request a variance is likely unknown to many restaurant owners, the procedure is not clear, and variances could be granted or denied on a case-by-case basis with inconsistent minimum standards. In contrast, the bill proposes clear guidance for local units of government and restaurants that chose to allow dogs.

In addition, there have been few reported incidents of dog bites that have occurred at restaurants. Those that do occur typically get disproportionate attention from the media. Generally, a dog owner who would consider taking a dog to a restaurant knows the temperament of his or her dog, and would know whether it would behave in such a setting. Restaurants owners concerned about the possibility of the additional responsibility, potential injury to patrons, or increased liability would have the option to exclude dogs. Restaurant patrons also would have the ability to avoid establishments that allowed dogs, or ask for indoor seating.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on local county health departments. The bill would allow a customer to bring a non-service dog into an outdoor dining area of a food service establishment, unless prohibited by a restaurant or a local unit of government. The bill also would establish requirements applicable to establishments that allowed dogs into their outdoor dining areas. As local public health departments are responsible for the regulation of local restaurant operations, they could incur additional regulatory costs to ensure restaurant compliance with the requirements of the bill, in an amount that cannot be determined at this time.

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<sup>1</sup> FDA Food Code §8-103.10. Under the Code, before a variance is approved, the person requesting it must provide a statement of the proposed variance from the requirement, citing the relevant provisions of the Code, and an analysis of how potential health hazards and nuisances typically addressed by the Code would be addressed by the proposal. In some situations, a hazard analysis and critical control points plan (a written plan that addresses preventative strategies for avoiding food contamination for biological, chemical, and physical hazards) is required.

<sup>2</sup> "Lincoln Road's Dog Friendly Atmosphere Revisited After Waitress Is Mauled", *CBS Miami*, 9-17-2012.

The bill could have a fiscal impact on the State to the extent the Department of Agriculture and Rural Development imposed an administrative fine for uncorrected violations of the bill's requirements.

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.