

## FOOD LAW REVISIONS

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**House Bill 4956 (Substitute S-2, on 3<sup>rd</sup> Reading in the Senate)**

**Sponsor: Rep. Jeff Mayes**

**House Committee: Agriculture**

**Senate Committee: Agriculture**

**Senate Bill 595 (Substitute S-2, on 2<sup>nd</sup> Reading in the House)**

**Sponsor: Sen. Gerald Van Woerkom**

**House Committee: Agriculture**

**Senate Committee: Agriculture**

**Complete to 10-3-07**

## A SUMMARY OF HOUSE BILLS 4956 (S-2) & SENATE BILL 595 (S-2) AS OF 10-3-07

House Bill 4956, together with Senate Bill 595, would amend the Food Law of 2000, including adopting the 2005 version of the federal Food Code (instead of the 1999 version currently incorporated into the Food Law). The two bills are tie-barred, meaning that unless both bills are enacted, neither will go into effect. House Bill 4956 is currently on Third Reading in the Senate, in the form of an S-2 Substitute. Senate Bill 595 is currently on Second Reading in the House, in the form of an S-2 Substitute.

The following is a description of the current content of both bills. See also the Senate Fiscal Agency's analysis dated 9-19-07.

### **House Bill 4956 (S-2) on Third Reading**

- Incorporate the 2005 version of the federal Food Code into the law by reference, with some modifications, replacing the 1999 version.
- Require the MDA to conduct periodic evaluations, rather than inspections, of food establishments, and remove a requirement that inspections be conducted unannounced.
- Require evaluations to be conducted at least every six months (as currently required for inspections) or according to a risk-based schedule.
- Permit the MDA Director to take photographs or copy records as part of an evaluation.
- Increase state license fees for specific types of food service establishments.
- Increase the fee for a special transitory food unit license and for a special transitory food unit plan review.
- Remove an exemption from state and local license fees for food service establishments in schools.
- Permit the MDA director to charge twice the applicable license fee for temporary food establishments applying for a license less than four days from opening.
- Exempt ice cream trucks, certain trade association events, and emergency feeding operations from the licensure requirements for food establishments.
- Require certain food establishments to employ at least one manager who was certified by a personnel certification program for food protection accredited by the American National Standards Institute (ANSI), beginning June 30, 2009.

- Require the MDA, by January 1, 2009, to develop requirements for retail food establishments to follow when employing certified food safety managers or personnel.
- Adopt by reference the certification program for food safety and protection developed by ANSI.
- Require the MDA to promulgate rules establishing certification fees.
- Repeal certain sections of the Law dealing with effective dates, repealed statutes, and procedures to be followed when employees of a food establishment contact ready-to-eat foods with bare hands.

[Note: Proposed changes to Sections 4107 through 8107 of the Food Law that were contained in House Bill 4956 when it passed the House are now contained in Senate Bill 595, described below. The provisions setting increased fees and allowing the MDA to charge an additional fee for temporary food establishments under certain circumstances, would take effect on January 1, 2008. The requirement that certain food establishments must employ a certified manager would take effect on June 30, 2009 (this date was added by the Senate). Most other provisions would become effective April 1, 2008. See the Enacting Sections of House Bill 4956 (Substitute S-2). ]

### **Senate Bill 595**

- Establish the "Dairy and Food Safety Fund," to be administered by the Michigan Department of Agriculture (MDA) and used for enforcement of the Food Law, the Grade A Milk Law, and the Manufacturing Milk Law.
- Require all license fees, penalties for violations, and certain other fees and fines to be deposited into the Dairy and Food Safety Fund, rather than the General Fund.
- Permit the MDA to charge a convenience fee to a license applicant to cover any additional costs associated with the payment method.
- Provide that any license fee paid on an initial application would be nonrefundable.
- Permit the MDA Director to refuse to issue a license to an establishment owned by a person whose food establishment license had been revoked for certain egregious violations involving adulterated food or unsanitary conditions.
- Require the MDA Director to consider the risk-based methodology described in the Food Code.
- Require milk and milk products manufactured, sold, served, or prepared at a retail food establishment to be pasteurized, and allow only certain ingredients found to be safe and suitable to be added to milk or milk products.
- Revise requirements for public notices in restaurants regarding raw or undercooked meats, poultry, seafood, shellfish, or eggs.
- Permit a food establishment to include on its menu or other selection information a statement regarding the presence or absence of artificial trans fat in any food it served.
- Require seafood processors and juice processors to comply with applicable federal regulations.
- Require a cider producer to have at least one certified employee.
- Revise the permitted ingredients in meat and sausage.
- Revise labeling requirements for ham and U.S. Department of Agriculture graded meat.

The provisions of Senate Bill 595 (S-2) regarding a convenience fee and nonrefundable application fees would take effect January 1, 2008. All other provisions of the bills would take effect April 1, 2008.

## **FISCAL IMPACT:**

The Department of Agriculture indicates that the overall fiscal impact of the bills would be minimal. The specific section amendments are discussed in detail below.

### *Chapter IV Amendments*

Chapter IV of the Food Law currently provides for the licensing by the Michigan Department of Agriculture of food establishments as defined in the Food Law. Section 4111 of the Food Law currently provides a schedule of license fees for various types of food establishments. The license fees imposed under Section 4111 currently generate approximately \$1.5 million in revenue. The bills would not change the schedule of fees in Section 4111 with the exception of the fees for special transitory food units, which would increase from \$117 to \$135. The department indicates that \$135 is approximately what local public health departments charge; increasing the fee would help prevent "price shopping" by licensees.

The bills would also add a new subsection 4 to Section 4111 which would allow the department to charge a "convenience fee" for the additional costs associated with the method of fee payment, not to exceed the costs to the department. The department indicates that the "convenience fee" would be used encourage applicants to use less expensive forms of application and payment, e.g. internet, rather than more expensive forms, such as in person contact with department staff.

Section 4117 of the Food Law currently directs fee revenue to the state General Fund. In practice the revenue has been treated in the department's budget as restricted revenue and used to support the department's Food and Dairy and Quality Assurance program. The bills would formalize this in statute and create a restricted Dairy and Food Safety Fund within the state Treasury. License fee revenue under Chapter IV of the Food Law would be credited to the new fund. Money in the fund would not lapse to the state General Fund but would carry over to subsequent fiscal years. Money in the fund would be used to administer the Food Law, the Milk Law of 2001, and the Manufacturing Milk Law of 2001.

The department indicates that these amendments would have minimal fiscal impact.

### *Amendments to Section 2125*

In addition to the license fees established in Section 4111, Section 2125 of the Food Law also provides for certain fees for certain other department services. Fees under this section generate approximately \$35,000 in fee revenue per year. Although this fee revenue has been treated as restricted revenue in the department's budget, current law indicates that fees collected under the section shall be deposited to the state General Fund. The bills would direct the revenue to the new Dairy and Food Safety Fund.

The bills would not change the fee schedule under Section 2125, except to increase the fee for special transitory food unit plan review from \$177 to \$197. In addition, the bills would provide for a fee of \$197 for plan reviews under section 8-201.11 of the US Food and Drug Administration Model Food Code. The department indicates that these amendments would have minimal fiscal impact.

### *Amendments to Section 3119*

Section 3119 of the Food Law currently provides a schedule of state license fees, in addition to those fees imposed under Section 2444 of the Public Health Code, for food service

establishment licensees. These fees are paid to local public health departments which in turn remit the fee revenue to the Michigan Department of Agriculture. These fees are currently subject to annual adjustment by an amount determined by the State Treasurer to reflect the cumulative annual change in the Detroit Consumer Price Index (CPI), but not to exceed 5%. The bills would increase the schedule of fees in Section 3119 to reflect the Detroit CPI adjustments to date, i.e. to the fee amounts currently charged by the department. These fees currently generate approximately \$600,000.

The bills would also increase the fee for licensing of a special transitory food unit by a local public health department from \$117, to \$135, i.e. the same as the state licensing fee imposed in Section 4111.

Under current law, food service operations of schools and other educational institutions are subject to licensing, but are exempt from the fees imposed under Section 2444 of the Public Health Code and the additional fees imposed under Section 3119 of the Food Law. The bills would eliminate this exemption.

The department indicates that amendments to this section would have minimal fiscal impact. The elimination of the current exemption for schools and other educational institutions would increase local costs by an indeterminate amount. The department indicates that many local public health departments have a lower fee schedule for non-profit institutions.

#### *Chapter V Amendments*

Sections 5105 and 5107 provide for fines for violations of provisions of the Food Law. Although treated as restricted revenue in the department's budget, current law directs fine revenue to the state General Fund. The bills would direct the revenue to the new Dairy and Food Safety Fund. The department indicates that fine revenue is approximately \$60,000 to \$75,000 per year.

#### *Other Fiscal Impacts*

The department indicates that the primary change in department responsibility under the bill involves the implementation of a mandatory manager certification requirement.

For additional information on the department's Food Safety and Quality Assurance program, see the House Fiscal Agency publication at <http://www.house.mi.gov/hfa/PDFs/food%20and%20dairy%20for%20web.pdf>

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