

REVISE THE FOOD LAW OF 2000

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House Bill 4956 (Substitute H-1)

Sponsor: Rep. Jeff Mayes

Committee: Agriculture

Complete to 7-24-07

A SUMMARY OF HOUSE BILL 4956 AS REPORTED FROM COMMITTEE

The bill would revise the Food Law of 2000 (the act) to incorporate the 2005 federal Food Code among other changes:

- Adopt 2005 Food Code. Adopt Chapters 1 through 8 of the Food Code with certain amendments and modifications. "Food Code" means the 2005 recommendations of the U.S. Food and Drug Administration regulating the design, construction, management, and operation of certain food establishments. See <http://www.cfsan.fda.gov/~dms/fc05-toc.html>. As is currently the case, the director of the Department of Agriculture could adopt changes or updates to the Food Code by promulgation of a rule, and the annexes of the Food Code are considered persuasive authority for interpretation of the Food Code. The chapters adopted are:
 - Chapter 1, "Purpose and Definitions"
 - Chapter 2, "Management and Personnel"
 - Chapter 3, "Food"
 - Chapter 4, "Equipment, Utensils and Linens"
 - Chapter 5, "Water, Plumbing, and Waste"
 - Chapter 6, "Physical Facilities"
 - Chapter 7, "Poisonous or Toxic Materials"
 - Chapter 8, "Compliance and Enforcement"

Significant changes contained in the 2005 Food Code adopted by the bill would include:

- Revised definitions of major food allergens such as milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts and soybeans (consistent with the federal Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA).
- More specific rules about when ill or potentially ill workers must be sent home and when they can return to work.
- Updated handwashing procedures to avoid recontamination of the hands after washing and to be more consistent with the Center for Disease Control guidelines.
- Tightened controls of bare-hand contact with food to prevent the spread of disease.
- Exceptions. Michigan would *not* adopt the 2005 Food Code in certain respects:

- To the extent that the 2005 Food Code conflicts with Michigan's Food Law of 2000 (as amended by the bill) and its regulations.
 - A provision that allows certain potentially hazardous foods to be refrigerated at higher than ideal temperatures (up to 7°C (45°F) instead of 5°C or less (41°F) as is otherwise required) if (1) equipment already in place is not capable of maintaining the food at a lower temperature and (2) the equipment is replaced or upgraded within a specified time period.
- Evaluations. Change "inspections" and "reinspections" of food service establishments to "evaluations" or "revaluations" throughout the bill. Likewise, change "inspection reports" to "evaluation reports." "Evaluation" would mean "a food safety audit, inspection, or food safety and sanitation assessment" whether announced or unannounced, that identified violations or verified compliance with the act and determined "the degree of active control by food establishment operators over foodborne illness risk factors." The Department of Agriculture (department) would be directed to consider the risk-based evaluation methodology as described in Food Code Annex for conducting evaluations. When critical violations were discovered during evaluations, require corrections to be confirmed within 30 days from the issuance of the report.
- Photographs, records, confidentiality. Allow the department to take photographs of areas and copies of records during food establishment evaluations with the obligation to preserve the confidentiality of certain visible trade secrets.
- Local health department program reviews. Change the department's obligation to conduct periodic comprehensive evaluations of local health department food sanitation programs to a requirement to conduct "reviews."
- Raise transitory food unit plan review fee. Raise the fee for a special transitory food unit plan review from \$177 to \$197, and adopt a fee of \$197 for a "plan review as specified in Section 8-201.11 of the Food Code" (a reference to the federal Food Code of 2005 to be adopted by the bill).
- Eliminate department review of training materials and programs. Delete current Section 2129, which authorizes the department to review and approve food safety training materials and food safety training programs. (A later section of the bill adopts certification programs accredited by the American National Standards Institute (ANSI).)
- Require most food establishments to employ at least one manager certified by a program with the specified accreditation. Require food establishments including (1) most food service establishments (see exceptions below), (2) extended retail food establishments, and (3) food service establishments operating within retail groceries to employ at least one manager who is currently certified under an ANSI-accredited personnel certification program.¹
- Exceptions. The following food establishments would *not* have to employ a certified manager:
 - A mobile food establishment.

¹ The bill requires that the certification program be accredited by the American National Standards Institute (ANSI), utilizing the Conference for Food Protection standards. According to its website, ANSI administers two accreditation programs for personnel certification agencies. One accreditation is based on the new International Standard ANSI/ISO/IEC 17024 and the other—the one to be adopted by the bill—is based on the Conference for Food Protection Accreditation Standards. See: www.ansi.org/conformity_assessment/personnel_certification/overview.aspx?menuid=4

- A food establishment operating under a temporary food service establishment license.
 - A special transitory food unit.
 - A vending machine location.
- Manager certification valid statewide. The state and all local units of government would have to honor the certification of an individual with current certification from an appropriately accredited program.
- Rule promulgation. Authorize the Department of Agriculture to promulgate rules to:
 - Establish requirements for the employment of certified food safety managers or personnel in retail food establishments by January 1, 2009.
 - Set a reasonable deadline for compliance with the new requirements.
 - Implement a certification tracking system (directly or by contract).
 - Implement and enforce these employment requirements.
 - Adopt the certification program developed by the American National Standards Institute (ANSI) and allow the department to adopt updates to those standards by rule.
- State food service establishment license fees. Increase *state* food service establishment license fee charges (required in addition to any *local* license fee) as follows:
 - Vending machine location fee, from \$2.50 to \$3.00.
 - Temporary food service establishment, from \$2.50 to \$3.00.
 - Food service establishment, from \$19 to \$22.
 - Mobile food establishment commissary, from \$19 to \$22.
 - Special transitory food unit, from \$30 to \$35.
 - The combined local and state license fee that a local health department is required to impose when licensing a special transitory food unit (which would include the \$35 state license fee set forth above), from \$117 to \$135.
 - The department would be required to increase these fees by the lesser of the inflation rate in the Detroit consumer price index or five percent on an annual basis.
- Risk-based evaluation schedule. Permit a risk-based schedule for evaluations of food service establishments instead of the current requirement that such establishments be inspected at least every six months. Allow a food service establishment which operates for nine or fewer months each year—currently required to be inspected at least once during those nine or fewer months of operation—to be evaluated according to the department's risk-based schedule.
- Transitory food unit evaluations. Require the holder of a transitory food unit license to request and receive two evaluations per licensing year spaced over the span of the operating season.
- Require schools to pay state and local food establishment license fees. Delete the provision exempting schools and other educational institutions from paying local and state food establishment license fees. (Section 501(c)(3) organizations would remain exempt from all food establishment license fees except for vending machine location license fees, as is currently the case. Veterans with waivers under Public Act 359 of 1921 would remain exempt from paying the fees.)

- Dairy and Food Safety Fund. Create a "Dairy and Food Safety Fund" as a restricted fund within the state treasury with investments to be directed by the state treasurer. Deposit all money collected by the department under this chapter (except for consumer food safety education and industry food-safety education fund surcharges) to the new fund. Money in the fund would not lapse to the general fund at the end of the fiscal year. Allow the department to expend money from the fund to administer the Food Law, the Grade A Milk Law of 2001, and the Manufacturing Milk Law of 2001. Designate the Department of Agriculture as the administrator of the fund for auditing purposes.
- Require separate licenses for businesses under common ownership at one location when separately managed. Allow the director to require individual licenses for separate food service or preparation areas located in the same building with the same owner, if they are separately managed.
- Double the license fee of a temporary food establishment applying within four days before opening. Authorize the director to double the usual license fee to evaluate a temporary food establishment applying less than four days before opening.
- Exemptions from licensure requirements. Update the list of persons and organizations exempt from Food Law licensing because they are licensed under a different law. Make other changes and additions to the definitions of persons and entities exempt from licensure requirements, including changes pertaining to: (1) persons selling fruits and vegetables directly to consumers; (2) consumers and nonprofit consumer cooperatives; (3) mobile food establishments (such as ice cream trucks); (4) food industry trade shows; and (5) feeding operations following an emergency or disaster.
- Requirements for qualifying for food establishment license. [Sec. 4107] The bill's changes to the requirements for qualifying for a food establishment license include:
 - Require submission of applications *as required by Section 4103* (instead of *on a form provided by the department*.)
 - Make license fees paid in connection with an initial application nonrefundable.
 - Allow department to charge a "convenience fee" and collect any additional costs associated with the method of fee payment for the license or permit fees not to exceed the department's costs.
 - Prohibit license renewals until applicable fees, late fees, reinspection fees, and fines were paid.
 - Require hearing for a refusal to issue or renew a license only as allowed under the Administrative Procedures Act of 1969.
 - Require a refund of a license fee or a reduced subsequent fee for an establishment because of the department's failure to issue or deny a license in a timely fashion only if the establishment is *otherwise ready to operate and is prevented from operating* by the department's failure to act within the required time.
 - Define "fee-exempt food establishment" as a food establishment exempt from all state and local food establishment license fees under Section 3119(4) combined with an exemption from the local health department sanitation fee under Section 2444 of the Public Health Code, MCL

333.2444. (Because the bill would eliminate the exemption for schools and other educational institutions, such institutions would also be removed from definition of "fee-exempt food establishment.")

- Administrative fines. Administrative fines and court-imposed costs of department investigations under the Food Law would be deposited into the Dairy and Food Safety Fund, not the General Fund.
- Deny licenses for two years after certain egregious violations. Allow the director to deny a license for two years to any establishment with an owner or manager whose food establishment license was revoked for egregious violations under specified sections.
- Licensing of milk manufacturers and wholesalers. Require that food establishments that manufacture and "wholesale" milk and milk products to be licensed under (and comply with) either the Manufacturing Milk Law or the Grade A Milk Law.
- Pasteurization for milk and milk products. Allow only pasteurized milk and egg products from a department-approved source for milk and milk products "manufactured, sold, served, or prepared at a retail establishment." Ingredients required to be pasteurized would include, but not be limited to, milk, milk solids, whey, nonfat dry milk, condensed milk, cream, skim milk, eggs, and egg products.
- "Safe and suitable" standard for milk and milk product ingredients. Only allow the addition of flavorings or other ingredients that are found "safe and suitable and added in a manner to prevent contamination." (The bill contains a list of ingredients that would be among those allowed to be added to milk and milk products under this standard.)
- Emergency plans and reporting. Amend the section requiring the cessation of all food operations if a food establishment is affected by a fire, accident, explosion, or other disaster that may create an imminent or substantial hazard to require cessation only if not otherwise directed, and to require the disaster to be reported to the director, not the local health department. Allow the department to recognize emergency plans that, if followed, would allow operations to continue in emergencies.
- Consumer information about consumption of certain raw or undercooked foods. The bill would allow food establishments the option of satisfying Section 3-603.11 of the Food Code by providing the following statement to consumers: "Ask your server about menu items that are cooked to order or served raw. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness." The bill deletes the current requirements set forth in Section 6149(2)-(4).
- Seafood processors. Require seafood processors to comply with federal regulations set forth in 21 CFR part 123. Waive the requirement that smoked fish processors comply with smoked fish rules if they comply with 21 CFR part 123.
- Juice processors. Require all juice processors to comply with federal regulations set forth in 21 CFR part 120.
- Requirement of a certified employee for cider producers An establishment that presses cider must have at least one active employee certified under an ANSI-accredited program or who has completed a current course recognized by the department pertaining to safe cider production.

- Sausages. Make numerous changes to Section 7115, including the following:
 - Allow poultry sausage to contain accompanying skin in natural proportions.
 - Allow sausages to contain certain cure agents and cure accelerators as described and defined in the bill.
 - Require sausages to contain at least 12 percent protein.
 - Ban added water from fresh sausages except to facilitate chopping or mixing and in an amount less than three percent of total ingredients.
 - Limit cooked sausage to 40 percent fat and added water.
 - Describe certain permitted additives as "antioxidants;" allow these ingredients in amounts that comply with applicable federal regulations, and require labeling in accordance with federal requirements.
 - Require Italian-style sausage to contain fennel and permit it to contain anise.
 - Ban skin from poultry-meat sausage.
 - Allow "cervid sausage" to be made from the meat of cervidae from approved sources. If the sausage contains all of its meat from one species, such as elk or venison, the species would have to be identified. Allow fat from other species to be added to cervid sausage.
- Ground poultry. Ground poultry would consist of "comminuted fresh poultry meat, with or without accompanying skin in natural proportions, with or without added poultry fat, and shall not contain more than 20% [instead of 15%] fat." The ground poultry would have to be identified by species.
- Ground poultry meat. Ground poultry meat would consist of comminuted fresh poultry meat, with or without added poultry fat, and shall not contain more than 15% fat. The name would have to be identified by the species contained in the product.
- Food ingredients and additives. Section 7137, concerning allowable food ingredients or additives, would be modified to prohibit, among other things, "substances that exceed amounts established under applicable regulations of the United States Department of Agriculture Food Safety Inspection Service."
- Descriptions.
 - Eliminate the ban on using the term "USDA" unless the official grade is also designated.
 - Prohibit any description of meat "associated with grading terminology" unless it actually bears a USDA stamp designating the grade or is of equal quality.
 - Prohibit an advertisement or display for sale of ham to state whether the ham is "whole, bone-in, semi-boneless, or boneless."
- Sale of food identified as having passed its sell date. Amend the section allowing the sale of certain food after its sell date (if wholesome and sound and clearly identified as having passed the sell date) to exclude "meat that has been removed from federally inspected retail packages."

Definitions. The definitions added or amended by the bill include:

"Added water" would mean "greater moisture content than normally found in meat *and, except for poultry, is determined by total moisture minus 4 times the percentage of*

protein. Added water may be in the form of water or ice." (Words or numbers in italics indicate changes that would be made.)

The definition of "**adulterated**" [Sec. 1105(a)(vi)] would be amended to include food that "is or contains a new animal drug or conversion product of a new animal drug that is unsafe within the meaning of section 360b of the federal Food, Drug, and Cosmetic Act, 21 USC 360b (instead of Section 512, 21 USC 512).

"**Bed and breakfast**" [Sec. 1105(c)] would mean a "private residence that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper's residence in which the innkeeper resides while renting the rooms of transient tenants, and serves breakfasts, *or other meals in the case of a bed and breakfast described in Section 1107(n)(ii)*, at no extra cost to its transient tenants." "A bed and breakfast described in Section 1107(n)(ii)" (existing section 1107(k)(iii), renumbered by the bill) excludes a bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, one or more of which are available for rent to transient tenants from the definition of food service establishment.

The apparent effect of the amendment to the definition of "bed and breakfast" would be to *include* private residences with 10 or fewer sleeping rooms offering breakfasts *or other meals* in the definition of "bed and breakfast."

"**Evaluation**" [Sec. 1107(c)] would mean "a food safety audit, inspection, or food safety and sanitation assessment whether announced or unannounced, that identifies violations or verifies compliance with the act and determines the degree of active control by food establishment operators over foodborne illness risk factors."

"**Fair concession**" [Sec. 1107(e)] would mean a "food concession, storage, preparation, or dispensing operation at a state or county fair."

"**Food Code**" [Sec. 1107(i)] would mean the 2005 regulations (instead of the 1999 regulations) issued by the United States Food and Drug Administration concerning the design, construction, management, and operation of certain food establishments. [Note: The 2005 Food Code can be found online at: <http://www.cfsan.fda.gov/~dms/fc05-toc.html>]

"**Food safety and sanitation assessment**" [Section 1107(l)] would mean "judging or assessing specific food handling activities, events, conditions, or management systems to determine their potential effectiveness in controlling risks for foodborne illness and for compliance with this act, accompanied by a report of findings."

"**Food safety audit**" [Section 1107(n)] would mean the "methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices" for compliance with the act, accompanied by a report of findings.

The definition of "**food service establishment**" which currently *excludes* a "food concession" would be amended to *include* a "food concession." "Food concession," however, would no longer be specifically defined in the bill.

"Inspection" would mean the checking or testing of observable practices against standards established in or adopted by this act, accompanied by a report of findings.

"Juice" would mean "the aqueous liquid expressed or extracted from 1 or more fruits or vegetables, or any concentrates of such liquid or puree."

"Meat" would mean "the edible part of clean, sound striated muscle of cattle, swine, sheep, deer *and other cervids*, goat, turkey, *duck*, *ratite*, or chicken slaughtered in compliance with all applicable laws, with or without the accompanying and overlying fat, and sinew, nerve, gland, and blood vessels which normally accompany the muscle tissues and which are not separated from it in the process of dressing. *Meat does not include specified risk materials.*" Ratite is the name of the animal group that includes ostriches and emus.

"Milk product" would mean "cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk and milk products, concentrated milk, concentrated milk products, skim milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. Milk product does include dietary dairy products, dairy-based infant formula, ice cream and other frozen desserts, cheese, and butter.

"Specified risk materials" would mean "items associated with the nervous system of beef cattle that are prohibited from human food as defined in 9 CFR 310.22."

FISCAL IMPACT:

The department indicates that the bill's overall fiscal impact 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. House Bill 4956 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 bill 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 bill 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 bill would direct the revenue to the new Dairy and Food Safety Fund.

The bill 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 bill 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 bill 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 bill 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 bill 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 bill 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>

POSITIONS:

The Department of Agriculture testified in support of the bill. (7-18-07)

Associated Food and Petroleum Dealers indicated its support of the bill. (7-18-07)

Michigan Agribusiness Association indicated its support of the bill. (7-18-07)

Michigan Farm Bureau indicated its support of the bill. (7-18-07)

Michigan Grocers Association indicated its support of the bill. (7-18-07)

Michigan Milk Producers Association indicated its support of the bill. (7-18-07)

Michigan Restaurants Association indicated its support of the bill. (7-18-07)

Legislative Analyst: Shannan Kane
Fiscal Analyst: William Hamilton

■ 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.