

Legislative Analysis



VENDING MACHINES

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Senate Bill 774 (passed by the Senate as S-1)

Sponsor: Sen. Joe Hune

House Committee: Agriculture

Senate Committee: Agriculture

Complete to 6-7-16

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 188 of 2016)

SUMMARY:

Senate Bill 774 would amend several sections of The Food Law by revising provisions relating to the licensing of vending machines and related license fees. The bill would take effect 90 days after the date it is enacted into law.

Among other things, the bill would include a *vending machine location* within the definition of "food establishment," and exclude a *vending machine location* from the definition of "food service establishment," but specify that a machine location would be considered part of a food service establishment if located on the establishment's premises.

[Generally speaking, *food service* establishments (such as restaurants) are licensed through local health departments and are subject to local fees. *Food establishments* (such as grocery stores) are licensed by the Michigan Department of Agriculture and Rural Development (MDARD).]

The bill also would add the term "vending company base location" as a vending machine location or other food establishment required to be separately licensed and establish a base license fee for such locations, as well as an additional fee based on the number of vending machine locations that vendor has in the state. (See *Fiscal Impact*.)

DETAILED SUMMARY:

Definitions

The bill would amend the following terms:

"*Federal act*" would mean the Federal Food, Drug, and Cosmetic Act (FDCA), Chapter 675, 52 Stat. 1040, 21 USC 301 to 399d, as in effect on October 1, 2012.

[Underlined text indicates language that would be added by the bill. This change is understood not to result in any changes in the way MDARD presently implements regulations under the FDCA.]

"*Food Establishment*" would mean an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, vended, sold, or offered for sale. Food establishment includes, but is not limited to, a food processor, a food warehouse, a food service establishment, a vending machine location, and a retail grocery. [Underlined sections indicate language added by the bill.]

The following are not considered a food establishment:

- A charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event.
- An inpatient food operation located in a health facility or agency subject to licensure under Article 17 of the Public Health Code.
- A food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.

"*Food service establishment*" would mean a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, 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. Food service establishment does not include any of the following:

- A motel that serves continental breakfasts only.
- A bed and breakfast that has 10 or fewer sleeping rooms for rent.
- A bed and breakfast that has more than 10 sleeping rooms for rent, if the bed and breakfast serves continental breakfasts only.
- A child care organization regulated under PA 116 of 1973, unless the establishment is carrying out an operation considered by the director to be a food service establishment.
- A vending machine location. However, if a food service establishment operates a vending machine location on the same premises, the vending machine location is considered part of the food service establishment. [Underlined sections indicate language added by the bill.]

"*Vending machine*" would mean a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. [Underlined text indicates language added by the bill.]

Presently, the definition of vending machine is "a self-service device **offered for public use** that, upon **activation by** a coin, token, card, key, or paper currency, dispenses unit servings of food **or beverages** without the necessity of replenishing the device between each vending operation." Bolded language indicates text removed by the bill]

The bill would not change that a vending machine does not include any of the following:

- A device that dispenses only bottled or canned soft drinks; other packaged nonperishable foods or beverages; or bulk ball gum, nuts, and panned candies.
- A water-dispensing machine that is registered under Chapter IV of this act.

"*Vending company base location*" is a term added by the bill, and it would mean a vending machine location or other food establishment required to be separately licensed under Section 4105(5) of the act.

Food safety manager

The bill would revise when a food service establishment would need to have a minimum of one managerial employee as a food safety manager. Presently a food service establishment must have at least one food safety manager unless it is either a licensed temporary food service establishment and/or a vending machine. The bill would remove the vending machine exemption.

Prohibition of local government regulations

The act currently prohibits a county, city, village, or township from regulating the aspects of food service establishments or vending machines that are subject to regulation under the act. The bill would remove vending machines from this prohibition, though the bill would consider vending machines operated by a food service establishment on the same premises to be part of that food service establishment.

License application and fee

Currently, the act contains a requirement that a local health department "promptly review" a license application for a food service establishment, **including but not limited to, a vending machine location**. The bolded text would be removed by SB 774. Also removed would be language stating that such a proposed location must be inspected by a local health department after the review is completed and the \$3 vending machine inspection fee. This fee is currently required for a charitable, religious, fraternal, service, civic or other nonprofit organization that has 501(c)(3) tax-exempt status, though such an entity is exempt from paying other additional state license fees.

Separate Licensing

SB 774 would add language stating that if prepackaged food is transported from a food establishment licensed under Chapter IV to one or more vending machine locations by employees of that food establishment, and the vending machine or machines are maintained by employees of the food establishment, the vending machine locations would not be required to be separately licensed and would be considered to be an extension of the food establishment, which would have to be separately licensed. However, if the food establishment from which the prepackaged food is transported is located in another state, both of the following would apply:

- One of the vending machine locations in this state must be separately licensed as a food establishment.
- The remaining vending machine locations in this state would be not required to be separately licensed and would be considered an extension of the food establishment.

Vending Machine License Fees

The bill would set the license fee for a vending company base location as the same as for a food warehouse, as described in *Fiscal Impact*.

The bill would additionally specify that if a person operates more than one vending company base location in Michigan, all vending machine locations served by those vending company base locations would be aggregated on one of the vending company base location licenses for the purpose of determining the amount of the additional fee for vending machine locations.

FISCAL IMPACT:

Senate Bill 774 would amend the state Food Law regarding the sale of prepacked foods in vending machines. According to information provided by the Michigan Department of Agriculture and Rural Development (MDARD), Senate Bill 774 would modernize the inspection of vending machines to establish a "systems approach" to vending machine inspection. MDARD currently inspects commissaries where prepacked food items sold in vending machines are produced. Under this bill, the department would establish inspection protocols for transportation and for vending machine locations. It is our understanding that the inspection of vending machine locations is currently performed by local public health departments.

The bill would amend Sec. 3119 to eliminate a current \$3.00 vending machine location fee, currently collected by local public health departments.

The bill would amend Section 4111 to include "vending machine base location" to the schedule of licensee fees established in that section. The fees would be the same as those currently established for a food warehouse: \$106.00 for 2016; \$145.00 for 2017; and \$183.00 for any subsequent year. The bill would establish additional fees for an operator of a vending machine base location based on the number of vending machine locations in the state:

- 1 to 20 locations: \$500.00
- 21 to 50 locations: 750.00
- 51 to 75 locations: \$2,000.00
- More than 75 locations: \$3,000.00

"Vending machine location" and "vending machine base location" are defined terms in the bill.

The department estimates that the fees established in this section will generate \$120,000 in revenue for credit to the state-restricted *Dairy and Food Safety Fund*. The department indicates that it would hire an additional food safety technician to perform the inspections required under the bill.

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