



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 774 (as enrolled)  
Sponsor: Senator Joe Hune  
Senate Committee: Agriculture  
House Committee: Agriculture

Date Completed: 6-20-16

### **RATIONALE**

The Food Law, among other things, prescribes requirements for the licensure and inspection of "food service establishments" and "food establishments". Food service establishments include restaurants and similar places where food and beverages are served, as well as vending machine locations. Food establishments include grocery stores, food warehouses, food processors, and food service establishments. The Food Law requires the Director of the Department of Agriculture and Rural Development (MDARD) to enforce and administer the Law, but it also delegates to local health departments the enforcement of the requirements pertaining to most food service establishments. The Department retains the responsibility to license and inspect food establishments.

As noted above, food service establishments include vending machine locations, which are places where one or more vending machines are installed and operated. The vending machines in question dispense items such as sandwiches and ice cream, rather than packaged nonperishable food such as potato chips and candy bars. Since vending machine locations are considered food service establishments, they are regulated at the local level. The local health departments apparently have different inspection, licensing, and fee structures for vending machine locations. Some claim that the local health department requirements are inconsistent, making it difficult for businesses with machines in multiple jurisdictions to comply. It has been suggested that MDARD, instead of local health departments, should be responsible for licensing and inspecting vending machine locations and the companies that maintain them.

### **CONTENT**

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

- **Include in the term "food establishment" a vending machine location.**
- **Exclude from the definition of "food service establishment" a vending machine location, but provide that a machine location would be considered part of a food service establishment if it were on the establishment's premises.**
- **Delete references to a vending machine location in provisions governing food service establishments, including provisions requiring prelicensure inspections.**
- **Eliminate a \$3 vending machine location license fee.**
- **Specify that a vending machine location would not have to be separately licensed if prepackaged food were transported from a food establishment to one or more vending machine locations by the establishment's employees.**
- **Establish a license fee for a vending company base location, and require an additional fee based on the number of vending machine locations operated.**

The bill would take effect 90 days after its enactment.

## Definitions

The Law defines "food establishment" as an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. The bill would include an operation where food is vended. The term includes a food processor, a food warehouse, a food service establishment, and a retail grocery. Under the bill, it also would include a vending machine location.

"Food service establishment" means 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.

Under the bill, "food service establishment" would not include a vending machine location. However, if a food service establishment operated a vending machine location on the same premises, the vending machine location would be considered part of the food service establishment. Where the Law refers to food service establishment, the bill would remove accompanying references to a vending machine location.

"Vending machine" means 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. Under 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. As currently provided, the term would not include either 1) a device that dispenses only bottled or canned soft drinks; other packaged nonperishable food or beverages; or ball gum, nuts, and panned candies; or 2) a water-dispensing machine that is registered under the Law.

## Vending Machine Inspection

As noted above, the Law delegates the enforcement of requirements pertaining to most food service establishment to local health departments. A local health department must review a license application for a food service establishment, including a vending machine location, to determine whether the application is complete and accurate. After determining that an application is proper, complete, and accurate, the local health department must inspect the proposed or existing establishment to determine compliance with the Law before making its recommendation to the Department on the issuance of a food service establishment license. Under the bill, the inspection requirement would apply to a food service establishment other than a vending machine location.

## Regulation of Vending Machines

A county, city, village, or township may not regulate aspects of food service establishments or vending machines that are subject to regulation under the Law except to the extent necessary to carry out a local health department's responsibility to implement the Law's licensing provisions. The bill would eliminate the reference to vending machines.

Except as otherwise provided, upon submitting an application, an applicant for a food service establishment license must pay to the local health department having jurisdiction any fee required under Section 2444 of the Public Health Code. (Section 2444 allows a local governing entity or district board of health to fix, and require the payment of, fees for services to be performed by a local health department.) The applicant also must pay an additional license fee as follows:

- Vending machine location fee, \$3.
- Temporary food service establishment, \$3.

- Food service establishment, \$22.
- Mobile food establishment commissary, \$22.
- Special transitory food unit, \$35.

The bill would eliminate the vending machine location fee and a reference to the fee in the Law.

Under the bill, if prepackaged food were transported from a food establishment licensed under the Law to one or more vending machine locations by the establishment's employees and the vending machine or machines were maintained by those employees, the vending machine locations would not have to be separately licensed and would be considered an extension of the establishment, which would have to be separately licensed. However, if the food establishment from which the prepackaged food was transported were located in another state, both of the following would apply: a) one of the vending machine locations in this State would have to be separately licensed as a food establishment, and b) the remaining vending machine locations would have to be separately licensed and would be an extension of the food establishment.

#### Vending Company Base Locations

The Law imposes annual license fees on various licensees. For a food warehouse, the fee is \$106 for 2016, \$145 for 2017, and \$183 for each subsequent year. Under the bill, those fees also would apply to a vending company base location. "Vending company base location" would mean a vending machine location or other food establishment required to be separately licensed as described above.

In addition, the operator of the vending company base location would have to pay a fee based on the number of vending machine locations in the State, as follows:

- For one to 20 locations, \$500.
- For 21 to 50, \$750.
- For 51 to 75 locations, \$2,000.
- For more than 75 locations, \$3,000.

If a person operated more than one vending company base location in the State, all vending machine locations served by those vending company base locations would have to be aggregated on one of the base location licenses in order to determine the amount of the additional fee.

MCL 289.2111 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**

Michigan has 45 local public health departments; each has its own inspection, licensing, and fee structure for vending machines. Vending machine businesses generally have vending machines in multiple locations and a central office or warehouse from which food is delivered to the machine locations. Many of these businesses have machines under the jurisdiction of multiple local health departments. Larger companies may be responsible for complying with licensing and inspection requirements for 20 or more different departments, often with little consistency between the various fees required. For example, one jurisdiction might charge a single fee to license the business and all of its locations, while another might charge a fee for the number of locations and a separate fee for each of the machines at those locations.

The bill would create a statewide system for licensing and inspecting vending machine locations and their operators, since vending machines would be regulated by MDARD. With the proposed fee structure, MDARD would be able to hire a full-time employee to administer the system. The bill would establish a fair and consistent fee structure for businesses.

### **Opposing Argument**

The machines described in the bill are not the vending machines that contain prepackaged candy, snacks, or bottled soda. Instead, their contents include high-risk foods containing meat, dairy products, and other food items that should be inspected to protect the public. The cost of those inspections is included in the license fees charged by local health departments, which vary in amount because the State has not properly allocated money to local governments through revenue sharing or other funding mechanisms.

According to the Michigan Association for Local Public Health, minimum performance requirements specify that one-third of all vending locations should be inspected every year. A majority of the local health departments inspect all locations within their jurisdictions annually. Under the proposed system, however, MDARD would have one person responsible for inspecting over 3,000 machines every five years. Even that timeline might not be feasible; MDARD has missed some of its inspection frequency requirements previously. Local health departments make the health and safety of Michigan residents a priority, and the current system works. The bill represents a solution to a problem that does not exist. The bill should at least require consumer notification that a machine is inspected, at most once every five years.

**Response:** The frequency of inspections should be sufficient to guarantee food safety. According to the Department, a technician should be capable of inspecting approximately 90 of the 140 vending companies per year on an 18-month schedule. Of the 140 companies that engage in this business, 110 have 10 or fewer machines. Most of these locations would have approximately half of their machines inspected every 18 months, with the other half inspected on a second 18-month cycle. Thus, most machines would be inspected every three years, with some machines being inspected on a five-year cycle. It is not clear at this time how many machines would be inspected every five years; however, the inspection schedule would be generated based on risk, with bad actors receiving a greater frequency of inspection.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have a fiscal impact on local public health agencies and the Michigan Department of Agriculture and Rural Development, as it would remove a requirement that local public health agencies (as delegated by the Department) inspect food-oriented vending machines in the State and would shift that responsibility to MDARD as part of its responsibility to inspect food establishments.

To fund the MDARD inspections, the bill would supplant locally established licensing charges for vending machine inspections with a statewide annual license fee, based upon the number of vending machine locations owned by a company: for 1 to 20 locations, \$500; for 21 to 50 locations, \$750; for 50 to 75 locations, \$200; and for more than 75 locations, \$3,000. According to MDARD, the annual revenue from these license payments would amount to approximately \$125,000 and would match the actual costs of their added inspection duties under the bill, allowing the Department to hire a technical employee and pay for other associated costs of performing the inspections.

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.