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BILL ANALYSIS



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Senate Bill 774 (Substitute S-1)
Sponsor: Senator Joe Hune
Committee: Agriculture

Date Completed: 5-23-16

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 in the establishment's premises.**
- **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 was 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.

Vending Machine Inspection

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 establishment license. Under the bill, the inspection requirement would apply to a food 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.

Fees, Vending Company Base Locations & Vending Machine 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 10 locations, \$575.
- For 11 to 50 locations, \$2,000.
- For more than 50 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 289.1107 et al.

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 (MDARD), 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 10 locations, \$575; for 11 to 50 locations, \$2,000, and for more than 50 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.