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House Bill 5130 (Substitute H-1 as passed by the House)

Sponsor: Representative Cindy Denby

House Committee: Agriculture Senate Committee: Agriculture

Date Completed: 3-7-12

CONTENT

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

- -- Incorporate changes in the 2009 Federal Food Code.
- -- Eliminate the terms "critical violation" and "noncritical violation" to classify violations of the Food Code, and instead refer to a violation of a "priority foundation item", "priority item", or "core item".
- Prohibit a person from operating as a shellfish dealer without being certified by the Michigan Department of Agriculture and Rural Development (MDARD).
- -- Establish a \$150 annual fee for certification as a shellfish dealer.
- Modify adoption and application of a section of the Food Code regarding the noncontinuous cooking of raw meat.
- -- Incorporate by reference the Federal Guide for Control of Molluscan Shellfish.
- Adopt by reference other Federal regulations.
- Authorize MDARD to enter into agreements with other states and the Federal government regarding food safety assistance, including employee training.
- -- Require MDARD to provide support to local health departments delegated enforcement authority under the Law.
- -- Require a mobile food establishment and a special transitory food unit to

- employ at least one certified managerial employee.
- -- Exempt from licensure under the Food Law a person operating a food warehouse or food processor containing only uncut fruits or vegetables, if certain conditions were met.
- -- Specify that, if prepackaged food were transported to and sold at a farmers' market, fair, or festival by a licensed food establishment, the sales location would not require a separate license.
- -- Prohibit a food establishment from allowing Michigan Bridge Card access to food assistance program benefits unless its inventory records matched redemption files for Bridge Card use and it met standards for sales from food staple groups.
- -- Eliminate an advisory committee on MDARD's use of certain Funds created in the law.

The bill also would repeal Public Act 244 of 1963, which regulates the processing, marking, branding, advertising, and sale of eggs, and instead adopt by reference the U.S. standards for shell eggs.

Incorporation of 2009 Federal Food Code

The Food Law provides that Chapters 1 through 8 of the "food code" are incorporated by reference except as amended and modified in the Law. "Food code" means the Federal Food Code's 2005

Page 1 of 5 hb5130/1112

recommendations regulating the design, construction, management, and operation of certain food establishments. The bill would refer to the 2009 recommendations.

(According to MDARD, major changes in the 2009 Food Code, from the 2005 Food Code, include:

- -- Employees must be trained in food allergy awareness (although the bill would require employees to be properly trained in food safety as it relates to their assigned duties).
- -- Ordering undercooked burgers from children's menus is not allowed.
- Cut tomatoes and cut leafy greens are considered potentially hazardous and must be temperature controlled for safety.
- -- Standards for how to par-cook foods safely.
- -- Violations are ranked in one of three categories based on their risk for causing foodborne illness.)

Violations

The bill would prohibit a regulatory authority from using the terms "critical violation" and "noncritical violation" to classify violations of the Food Code. The bill would delete the definitions of those terms.

The bill, instead, would refer to a "core item violation", "priority item violation", and "priority foundation item violation". "Core item" would mean a provision in the Food Code that is not designated as a priority item or a priority foundation item. The term would include an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures, facilities or structures, equipment design, or general maintenance.

"Priority item" would mean a provision in the Food Code whose application contributes directly to the elimination, prevention, or reduction to an acceptable level of hazards associated with foodborne illness or injury if there is no other provision that more directly controls the hazard. The term would include an item with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, or hand washing.

"Priority foundation item" would mean a provision in the Food Code whose application

supports, facilitates, or enables one or more priority items. The term would include an that requires item the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as training, personnel infrastructure, equipment, HACCP necessary plans, documentation or record-keeping, labeling.

Shellfish Dealers

The bill would prohibit a person from acting as a shellfish dealer unless MDARD had certified the person as shellfish dealer. An application for certification would have to be submitted on forms approved by the Department and contain the reasonable information it required.

An applicant would have to meet all of the following requirements:

- -- Be the owner of the shellfish dealer or an officer of the legal entity owning the shellfish dealer.
- -- Comply with the requirements of the Food Law and its rules.
- Allow the MDARD Director access to the shellfish dealer and records, as required to determine compliance with the Food Law and rules.

A shellfish dealer certificate would be valid from May 1 to April 30 of each year. The Department would have to charge a \$150 fee, annually, for a shellfish dealer certificate.

Each shellfish dealer would be required to have and implement an HACCP plan and have a program of sanitation monitoring and record-keeping in compliance with the Guide for the Control of Molluscan Shellfish.

"HACCP plan" would mean a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

Noncontinuous Cooking of Raw Meat

The bill would incorporate by reference Section 3-401.14 of the Food Code, but

would modify it to regulate the noncontinuous cooking of raw animal foods. The modified standards would include regulations regarding initial heating, cooling or freezing, reheating, and storing of the meat.

Regulation of Eggs

The bill would repeal Public Act 244 of 1963, which regulates the processing, marking, branding, advertising, and sale of eggs. The bill specifies instead that U.S. standards for shell eggs would be adopted by reference.

The bill would prohibit a person from selling, offering, or exposing for sale to the consumer or to the retail trade, or possessing with intent to sell to the consumer or to the retail trade, any egg unfit for human food. Such an egg would have to be broken out of the shell and denatured or destroyed by methods approved by the MDARD Director so that it could not be used for human food.

The final determination of all grade and quality factors of an official sample of shell eggs from domesticated chickens would have to be made by visual examination of the egg to determine cleanliness, soundness of shell, and exterior quality, and by candling or breaking to determine interior quality. Examination would have to be made by a competent representative authorized by the Director.

<u>Incorporation/Adoption</u> of <u>Federal</u> Regulations

The bill would incorporate by reference certain parts of the Guide for Control of Molluscan Shellfish, except to the extent the Food Law and rules specified different requirements. ("Guide for the Control of Molluscan Shellfish" would mean Section II, Model Ordinance, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, 2009, recommendations of the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.)

The MDARD Director could adopt, by rule, any changes or updates to the Guide. The bill specifies that the annexes of the Guide would be considered persuasive authority for its interpretation.

The bill also would adopt by reference parts of Chapter 21 of the Code of Federal Regulations (21 CFR Parts 1, 70, 73, 74, 81, 82, and 100 to 199), except to the extent that the Food Law and rules promulgated under it specified different requirements. The Director, by promulgation of a rule, could adopt any changes or updates to those parts of Chapter 21.

<u>Interstate Agreements</u>

The bill would allow MDARD to enter into agreements with other states and the Federal government to provide and accept food safety assistance, including the training of personnel. Any MDARD employee assigned to food safety duties or training programs outside of Michigan would be considered to be working inside the State for purposes of compensation and any other employee benefits.

MDARD Support to Locals

The Food Law requires MDARD to delegate the authority and responsibility for the enforcement of the requirements pertaining to food service establishments to local health departments meeting certain program criteria. The bill would require MDARD to provide evaluation, consultation, and training support to those local health departments.

Certified Managerial Employee

The Food Law requires certain food establishments to employ at least one managerial employee who is currently certified under a personnel certification program accredited by the American National Standards Institute, using the Conference for Food Protection standards. This requirement does not apply certain food establishments, including a "mobile food establishment" and a "special transitory food unit". The bill would eliminate those two from the list of exempt establishments.

("Mobile food establishment" means a food establishment operating from a vehicle that returns to a commissary for servicing and maintenance at least once every 24 hours. "Special transitory food unit" means a temporary food establishment that is licensed to operate throughout the State without the 14-day limits or a mobile food

establishment that is not required to return to a commissary.)

Smoking Ban Violation

The bill specifies that a violation by a food establishment regarding smoking in a public place or smoking in a food service establishment would not be a violation of a priority item or priority foundation item of the Food Law or the Food Code.

Temporary Licenses

The Law allows the MDARD Director to issue a temporary food establishment license. The bill specifies that the Director, pursuant to uniformly applied Department guidance, could decline to issue multiple temporary food establishment licenses for the same establishment within a given calendar year.

Uncut Fruits & Vegetables

Under the bill, a person operating a food warehouse or food processor would be exempt from licensure, if the warehouse or processor contained or handled only uncut fruits or vegetables, or both, and met all of the following criteria:

- -- The establishment was owned and operated by the person producing the fruits or vegetables.
- Activities at the establishment were limited to storing, grading, sorting, packing, washing, trimming, and refrigerating.
- -- The fruits or vegetables were primarily from the person's own production, and the balance were products of the same genus or genera from other agricultural producers.
- -- The food was not "potentially hazardous food (time/temperature control for safety food)" as defined in the Food Code.

<u>Prepackaged Food: Farmers' Market, Fair,</u> or Festival

The bill specifies that, if prepackaged food were transported from a licensed food establishment to a sales location at a farmers' market, fair, or festival, the sales location would not have to be separately licensed and would be considered an extension of the food establishment, if the

food were transported and sold by the food establishment's employees.

"Farmers' market" would mean a public and recurring assembly of farmers or their representatives selling directly to consumers food and products that the farmers have produced themselves. In addition, the market could include a variety of other vendors as determined by market management.

"Fair" would mean a fair or exhibition operated and managed under Public Act 11 of 1929 (which governs county fairgrounds), or held by an agricultural or horticultural society under Public Act 80 of 1855 (which authorizes those societies).

"Festival" would mean an event, staged by a local community or local organization, that centers on and celebrates a certain aspect of that community or organization. "Festival" would include a fair, art show, chili cook-off, car show, hot air balloon festival, religious festival, drama festival, or cultural festival.

Bridge Card

The bill would prohibit a food establishment from permitting Michigan Bridge Card access to food assistance program benefits unless the establishment's inventory records matched redemption files for Bridge Card use for food assistance program benefits and one or more of the following applied:

- The food for sale included, on a continuous basis, at least three varieties of foods in each of the following four staple food groups and perishable foods in at least two of the groups: meat, poultry, or fish; bread or cereal; vegetables or fruits; and dairy products.
- -- At least 50% of the total dollar amount of all retail sales, including food and nonfood items, fuel, and services at the food establishment, was from the sale of food in any of the four staple food groups.

Advisory Board

The Food Law created the Consumer Food Safety Education Fund, which is administered by MDARD and funded by the addition of \$3 to the fee for each food establishment license in all categories except vending machines and fee-exempt

food establishments. Money in the Fund must be used to provide statewide training and education to consumers on food safety. The Law also created the Industry Food-Safety Education Fund, administered by MDARD and funded by the addition of \$2 to the fee for each food service establishment license described above. Money in the Fund must be used to provide food safety training and education to food service establishment employees and MDARD agents who enforce the Law.

The Law requires an advisory committee consisting of at least nine people representing consumers, industry, government, and academia to advise MDARD on the use of money in the Funds. The bill would delete this requirement.

MCL 289.1101 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would update requirements for the safe handling of food, including the adoption of newer U.S. Food Code regulations and allowing flexibility for local health departments in dealing with food safety violations. According to MDARD, the proposed changes food to safety requirements could be properly monitored and regulated by the existing regulatory resources of State and local government and would have no additional fiscal impact upon them.

The bill also would establish a new shellfish dealers' certification program, which would certify that the dealers met Federal standards, thus allowing their product to be shipped and sold interstate. A shellfish dealer's certificate would require an annual fee of \$150 and provide sufficient revenue for MDARD to oversee the State's 14 or so shellfish dealers.

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.