



**House
Legislative
Analysis
Section**

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FOOD LICENSING EXEMPTIONS

House Bill 4522 as enrolled RECEIVED
Third Analysis (8-2-88)

Sponsor: Rep. Alvin J. Hoekman
House Committee: Public Health
Senate Committee: Health Policy

THE APPARENT PROBLEM:

Under present law, caterers who prepare food on their licensed premises to be served elsewhere are required to obtain temporary food establishment licenses for each of the locations at which they intend to serve food. Since the food is already prepared in a licensed, inspected location and is transported and served by employees of that licensed establishment, the kinds of public health concerns that arise when food is actually prepared at unlicensed, uninspected temporary locations do not apply. And yet, for some caterers, this requirement could mean licensing fees of between \$200 and \$500 a week to local health departments just for this part of their catering business alone. At the request of one such catering establishment, legislation has been introduced which would remove this unnecessary licensing requirement.

The Department of Public Health also recommends deregulating a part of the food service industry where little or no public health risk exists.

Public Act 111 of 1987 (House Bill 4662) amended the Public Health Code to exempt certain "bed and breakfasts" from food service establishment provisions. In order to make the rest of the Public Health Code consistent with the change effected by this new public act, another amendment to the code is needed.

THE CONTENT OF THE BILL:

The bill would amend the section of the Public Health Code which regulates food service establishments to exempt from licensure (a) certain temporary locations at which food prepared at a caterers' licensed establishment was served, (b) certain caterers who serve non-potentially hazardous foods or beverages using disposable utensils, and (c) certain "bed and breakfast" establishments.

Under the bill, a temporary food service establishment would not have to be licensed under the code if (a) the food is prepared in a licensed food service establishment and taken by employees of the licensed establishment to a fixed, temporary serving location, where it is served by the employees, and if (b) no food preparation is done at the temporary location.

The bill also would exempt from the licensing requirements of the code temporary food service establishments that (a) use only utensils designed to be used once and discarded and (b) serve only food that is not "potentially hazardous" (defined in the act as being capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms). Examples of potentially hazardous foods listed in the act are milk and milk products, eggs, meat, poultry, fish, shellfish, and edible crustacea. Thus, for example, church lemonade or coffee stands would not have to be licensed as temporary food establishments, nor community center movies at which popcorn was served.

Finally, the bill would exempt from these licensing requirements (a) all bed and breakfast inns with up to eight bedrooms for rent, and bed and breakfast inns with

nine to fifteen rooms for rent that offer continental breakfasts as their only meals.

MCL 333.12901 and 333.12904

FISCAL IMPLICATIONS:

The Department of Public Health estimates that approximately \$500 to \$1,000 a year would be lost to the state from the loss of the one dollar license fee that owners and operators of temporary food service establishments are required to pay the state in addition to the local health department fees. (5-7-87) In addition, the House Fiscal Agency says that there would be a negligible loss to the state from exempting the one-hundred-odd bed and breakfast establishments from food license fees. (8-5-88)

ARGUMENTS:

For:

The separate licensing of a food serving location, when the food is prepared in a licensed facility and transported to another location by employees of the licensed facility who set up necessary equipment and serve the food, is redundant. The present licensing requirement causes an unnecessary burden on the caterer, who must apply and pay for the temporary license, and the local health department, which must inspect the serving location and issue the license. Such serving locations should be permitted to operate under the license issued to the facility where the food was initially prepared.

For:

Since temporary food service establishments which serve only non-potentially hazardous foods (such as lemonade or popcorn) in "single service" containers pose little or no risk in the spread of bacterial and viral foodborne diseases, licensing and inspection under the auspices of public health and disease prevention should not be continued.

For:

"Bed and breakfasts" (B&Bs) are a popular form of accommodation for travelers that typically consist of a private home where the owners rent a room and provide breakfast to a traveler for a single price. Since B&Bs traditionally offer both lodging and food to the public, some state officials attempted to apply state standards regulating hotels and food service businesses. B&B owners feared that this could blur the distinction between traditional B&Bs and hotels or motels that serve free breakfasts, as well as possibly stifling the growth of the industry in Michigan by placing strict and often expensive food service requirements on individual homes.

Public Act 111 of 1987 (House Bill 4662) amended the Public Health Code (MCL 333.12901) to exempt bed and breakfasts from food service establishment provisions if the B&B either (a) had eight or fewer rooms for rent or (b) had between nine and fifteen rooms for rent and only

H.B. 4522 (8-2-88)

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served continental breakfasts (defined as "the serving of only nonpotentially hazardous foods such as a roll, pastry, or doughnut, fruit juice, hot beverage, or individual portions of milk and items incidental to such foods"). Public Act 209 amends two other sections of the Public Health Code (MCL 333.12901 and 12904), making them consistent with the change effected by Public Act 111.

Against:

Bed and breakfasts should not be exempted from the sanitation and safety requirements that other food service establishments must observe. Exemption of bed and breakfasts from food service regulations and inspections could result in adverse health effects. State sanitation and safety requirements and inspections by public health officials of food service establishments cover not only food handling but also water supplies and sewage disposal. Requiring B&Bs to be inspected would minimize the risk of food contamination and poisoning, as well as protect B&B owners, guests, and neighbors from the risks of poor sanitation or unsafe water supplies.

Response: Other states that have had more experience than Michigan with regulating bed and breakfasts exempt those serving only "continental" breakfasts (juice, coffee, and commercially-produced goods). Some states (for example, Ohio and Washington) also exempt smaller B&Bs (those with no more than five rental rooms) that serve full breakfasts. Michigan should follow the lead of these other states and not completely deregulate all B&Bs.

Since the kinds of products involved in continental breakfasts are not likely to pose serious health problems, B&Bs serving these kinds of breakfasts should be exempted from food service regulations. And even though, from a public health point of view, it might be desirable to regulate all B&Bs that serve full meals, at the very least exemptions should be granted only to the smaller establishments, whose kitchens can adequately handle the smaller number of guests. In addition, "full breakfast" B&Bs should be limited to serving meals only during the morning hours in order to forestall their serving "breakfast" at all hours of the day.

Unlike continental breakfasts, "full" breakfasts can include meat, dairy, and egg products, all of which potentially can cause dangerous health problems if not properly stored and prepared. While it perhaps is reasonable to assume that the average domestic kitchen adequately could handle complete food service for eight to ten people (that is, four to five double occupancy rental rooms), most private homes do not have the kitchen, food storage, and sanitary facilities necessary to serve full breakfasts daily to sixteen or more people (eight rooms at full capacity plus permanent residents). Restricting the number of people that could be served — and restricting the hours during which a full breakfast could be served — would avoid the risk of placing undue burdens on limited kitchen facilities and the attendant increased risks of food contamination due to improper handling and inadequate storage of food.

Against:

Bed and breakfasts should not be exempted from food licensing, since that gives them an unfair advantage over small motels of comparable size and might take business away from restaurants or cafes near the B&Bs. If B&Bs are deregulated, then these small motels and cafes also should be deregulated. One facility that serves food should not be regulated while another is free from regulation.