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 BILL ANALYSIS

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Senate Bill 595 (Substitute S-2 as passed by the Senate)
House Bill 4956 (Substitute S-2 as reported)
Sponsor: Senator Gerald Van Woerkom (S.B. 595)
Representative Jeff Mayes (H.B. 4956)
Senate Committee: Agriculture
House Committee: Agriculture (H.B. 4956)

(as enacted)
(as enacted)

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RATIONALE

The Food Law was enacted in 2000 to update food handling and food safety requirements for food establishments. In the years since the Law was enacted, there have been technological changes in the food industry, as well as emerging public health risks, leading some to suggest that the statute should be updated. For example, there has been a marked increase in the number of norovirus outbreaks in Michigan in 2006 and 2007. This highly contagious pathogen is transmitted from person to person, often through poor food management practices. Other public health risks, including adulterated food imported from China and contaminated spinach from California, also have refocused public attention on food safety.

The current Law incorporates the 1999 version of the Federal Food Code, with some modifications. The Food Code, developed by the U.S. Food and Drug Administration (FDA), consists of voluntary recommendations on food safety, handling procedures, and other measures that should be taken to protect the food supply. The current policy of the FDA is to revise the Food Code every four years, to take into account the latest scientific understanding of risks and best practices, as well as changing technologies and new threats or potential hazards. The latest version was released in 2005 and contains a number of changes, including new managerial training requirements regarding knowledge of food allergens; new controls for reduced-oxygen packaging of foods; revised requirements for

labeling ready-to-eat foods with expiration dates; and recommendations to improve the security of the food supply.

To protect consumers and increase public confidence in food produced and prepared in this State, it has been suggested that the Food Law be updated to incorporate the most recent version of the Food Code, address the latest changes in the industry, and focus more attention on the highest-risk areas for enforcement.

CONTENT

Senate Bill 595 (S-2) would amend the Food Law to do the following:

- Establish the "Dairy and Food Safety Fund", to be administered by the Michigan Department of Agriculture (MDA) and used for enforcement of the Food Law, the Grade A Milk Law, and the Manufacturing Milk Law.
- Require all license fees, penalties for violations of the Law, and certain other fees and fines to be deposited into the Dairy and Food Safety Fund, rather than the General Fund.
- Permit the MDA to charge a convenience fee to a license applicant to cover any additional costs associated with the payment method.
- Provide that any license fee paid on an initial application would be nonrefundable.

- Permit the MDA Director to refuse to issue a license to an establishment owned by a person whose food establishment license had been revoked for certain egregious violations involving adulterated food or unsanitary conditions.
- Require the MDA Director to consider the risk-based methodology described in the Food Code.
- Require milk and milk products manufactured, sold, served, or prepared at a retail food establishment to be pasteurized, and allow only certain ingredients found to be safe and suitable to be added to milk or milk products.
- Revise requirements for public notices in restaurants regarding raw or undercooked meats, poultry, seafood, shellfish, or eggs.
- Permit a food establishment to include on its menu or other selection information a statement regarding the presence or absence of artificial trans fat in any food it served.
- Require seafood processors and juice processors to comply with applicable Federal regulations.
- Require a cider producer to have at least one certified employee.
- Revise the permitted ingredients in meat and sausage.
- Revise labeling requirements for ham and U.S. Department of Agriculture graded meat.

The provisions of Senate Bill 595 (S-2) regarding a convenience fee and nonrefundable application fees, and the increased fees under House Bill 4956 (S-2) and the provision allowing the MDA Director to charge twice the license fee for a temporary food establishment under certain circumstances, would take effect January 1, 2008. All other provisions of the bills would take effect April 1, 2008.

House Bill 4956 (S-2) would amend the Food Law to do the following:

- Incorporate the 2005 version of the Federal Food Code into the Law by reference, with some modifications, replacing the 1999 version.
- Require the MDA to conduct periodic evaluations, rather than inspections, of food establishments, and remove a

- requirement that inspections be conducted unannounced.
- Require evaluations to be conducted at least every six months (as currently required for inspections) or according to a risk-based schedule.
- Permit the MDA Director to take photographs or copy records as part of an evaluation.
- Increase State license fees for specific types of food service establishments.
- Increase the fee for a special transitory food unit license and for a special transitory food unit plan review.
- Remove an exemption from State and local license fees for food service establishments in schools.
- Permit the MDA Director to charge twice the applicable license fee for temporary food establishments applying for a license less than four days from opening.
- Exempt ice cream trucks, certain trade association events, and emergency feeding operations from the licensure requirements for food establishments.
- Require certain food establishments to employ at least one manager who was certified by a personnel certification program for food protection accredited by the American National Standards Institute (ANSI).
- Require the MDA, by 2009, to develop requirements for retail food establishments to follow when employing certified food safety managers or personnel.
- Adopt by reference the certification program for food safety and protection developed by ANSI.
- Require the MDA to promulgate rules establishing certification fees.
- Repeal certain sections of the Law dealing with effective dates, repealed statutes, and procedures to be followed when employees of a food establishment contact ready-to-eat foods with bare hands.

The two bills are tie-barred to one another.

Senate Bill 595 (S-2)

License & Fees

The Law requires the MDA to impose specific license fees for various food establishments for each year or portion of a year. The bill would increase the license fee for a special transitory food unit from \$117 to \$135.

Under the bill, any license fee paid on an initial application would be nonrefundable, and the MDA could charge a convenience fee and collect from the applicant any additional costs associated with the method of payment for the license or permit fees, not to exceed the costs to the MDA.

The Law prohibits the MDA from issuing or renewing a license under the Law until the fee and any late fee have been paid. The bill also would require reinspection fees and fines to have been paid.

Currently, a hearing is not required regarding the MDA's refusal to issue or renew a license. The bill would retain that provision, except as allowed under the Administrative Procedures Act.

The Law requires the MDA to issue an initial license within 90 days after the applicant files a completed application, and a renewal license within 120 days. If the application is considered incomplete, the MDA must notify the applicant in writing, or make the information electronically available, within 30 days after receiving the application. If the MDA fails to issue or deny a license within the time required, it must return the license fee and reduce the license fee for the applicant's next renewal application, if any, by 15%. Under the bill, that requirement would apply only if the MDA failed to issue or deny a license to an establishment that otherwise was ready to operate and was prevented from operating.

Transitory Food Units

Currently, a transitory food unit license holder must meet certain requirements, including a requirement that the licensee, while in operation, request and receive two inspections per licensing year. The bill would refer to evaluations rather than inspections, and would require the evaluations to be spaced generally over the span of the operating season.

Risk-Based Evaluations

The bill would require the MDA Director to consider the risk-based evaluation methodology described in Food Code Annex 5, Section 4 for conducting evaluations of food establishments.

(That section of the Food Code describes standards for conducting a risk-based inspection, including the following:

- Focusing the inspection on the highest potential risk factors.
- Demonstrating proper food safety procedures by washing hands when entering the establishment, avoiding touching ready-to-eat foods with bare hands, and other measures to lead by example.
- Conducting inspections at variable times.
- Establishing inspection priorities, first establishing an open dialogue with the person in charge, reviewing previous inspection records, conducting a menu or food list review, and conducting a quick walk-through.
- Determining process flows and identifying risk factors in the process flows.
- Assessing active managerial control of foodborne illness risk factors and implementation of Food Code interventions.
- Evaluating basic sanitation and facilities.)

Currently, all violations that are marked as critical on an inspection report must be corrected immediately unless otherwise specified, and the MDA Director must conduct a follow-up inspection to confirm corrections. The bill would require the MDA Director to confirm corrections within 30 days after the report was issued, but would eliminate the reference to a follow-up inspection.

Violations

The Law prohibits a person from doing or causing to be done certain actions, including the following:

- Manufacturing, selling, delivering, holding, or offering for sale adulterated or misbranded food.
- Adulterating or misbranding food.
- Receiving in commerce food that is adulterated or misbranded and delivering

or proffering the delivery of that food for pay or otherwise.

- Permitting filthy or unsanitary conditions to exist in a food establishment in which food intended for human consumption is manufactured, kept, stored, served, sold, or offered for sale.

Under the bill, for a person whose food establishment license had been revoked for egregious violations of those provisions, the MDA could refuse to issue or reissue a license to any establishment in which that person had ownership or management interest for a period of two years.

The Law permits the MDA, upon finding that a person violated a provision of the Law or a rule promulgated under it, to impose an administrative fine of up to \$500 for the first offense and up to \$1,000 for a subsequent offense, as well as the actual cost of the investigation of the violation. Any administrative fines and costs collected under this provision must be paid to the State Treasury and credited to the General Fund. The bill would require that money to be deposited into the Dairy and Food Safety Fund.

If a violation results in a conviction, the court must assess against the defendant the costs of the MDA's investigation. The assessment must be paid to the State Treasurer and credited to the MDA for enforcement of the Law. The bill instead would require the assessment to be deposited into the Dairy and Food Safety Fund for enforcement of the Law.

Dairy and Food Safety Fund

The bill would establish the Dairy and Food Safety Fund as a restricted fund within the State Treasury.

Presently, money collected under Chapter 4 (Licensing) of the Food Law must be credited to the State's General Fund, except as otherwise provided. The bill instead would require that money to be credited to the Dairy and Food Safety Fund.

The State Treasurer could receive money or other assets from appropriations or from any other source for deposit into the Fund. Money in the Fund would not lapse to the General Fund at the end of the fiscal year, but would carry over to the following fiscal

year. The Treasurer would have to direct the investment of the Fund, and credit to it interest and earnings from Fund investments.

The MDA would have to administer the Fund and spend money from it for the purpose of administering the Law and enforcing its provisions, as well as the Grade A Milk Law and the Manufacturing Milk Law. The MDA would be the administrator of the Fund for auditing purposes.

Milk & Milk Products

Under the bill, only pasteurized ingredients from an MDA-approved source could be used for milk and milk products manufactured, sold, served, or prepared at a retail food establishment. Such ingredients would include milk, milk solids, whey, nonfat dry milk, condensed milk, cream, skim milk, eggs, and egg products.

Ingredients that could be subsequently added to milk or milk products would be those flavorings or other ingredients that had been found to be safe and suitable and were added in a manner to prevent contamination, including the following:

- Ingredients permitted by a standard of identity for milk or milk products under the Federal Food, Drug, and Cosmetic Act or regulations.
- Fresh fruits and vegetables added to cultured milk and cultured milk products, provided the resultant equilibrium pH level (4.6 or below when measured at 75° F) was reached without undue delay and maintained during the shelf life of the product.
- Ingredients, such as roasted nuts or dried fruits, that were subjected to prior heating sufficient to destroy pathogenic microorganisms.
- Ingredients having a high acid content or high alkalinity (with a pH level of either 4.6 or below, or greater than 11, respectively, when measured at 75° F).
- Dry sugars and salts.
- Flavor extracts having a high alcohol content.
- Safe and suitable bacterial cultures and enzymes.
- Ingredients having a water activity level of 0.85 or less.
- Other ingredients that had been found to be safe and suitable by the FDA.

(Water activity is a measure of the amount of free water in a substance or mixture. Pure water has a water activity level of 1.0; a substance with no free water has a water activity level of 0.)

Retail food establishments that manufacture and wholesale milk and milk products also would have to be licensed under and meet the requirements of the Manufacturing Milk Law or the Grade A Milk Law.

Disaster Response

Currently, if a food service establishment is affected by fire, flooding, accidents, explosions, or other disaster that may create an imminent or substantial hazard, all food service operations must cease, and the licensee must report the disaster immediately to the local health department and request an evaluation of the establishment to determine the effect of the disaster on its operation. Under the bill, the establishment would have to cease operation unless otherwise directed, and the licensee would have to report to the MDA Director the disaster and its effect on the operation of the establishment. The MDA could recognize emergency plans that, if being followed, would serve as a means to use temporary alternative procedures for continuity of operation.

Raw or Undercooked Food

Currently, to satisfy Section 3-603.11 of the Food Code (which deals with a consumer advisory regarding the consumption of raw or undercooked animal foods), a food establishment must make a disclosure in the selection information (e.g., menu) that an item contains raw or undercooked food of animal origin, by either describing the item to include the disclosure, or marking the items with an asterisk, with a footnote that states the items are served raw or undercooked, or contain or may contain raw or undercooked ingredients.

A reminder of the increases risks associated with eating food subject to the disclosure may be satisfied by various methods. A food establishment may mark items requiring disclosure with an asterisk, with a footnote that states one of the following:

- "Regarding the safety of these items, written information is available on request."
- "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness."
- "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

The requirement also may be met if a publicly available placard supplies the reminder of significantly increased risk and meets specified criteria regarding placement and visibility.

As an alternative, the FDA model consumer advisory brochure or equivalent, as determined by the MDA Director, may be publicly available.

The bill would delete all of the above provisions. Instead, to satisfy Section 3-603.11 of the Food Code, a food establishment could provide the following statement on selection information so that it was publicly available: "Ask your server about menu items that are cooked to order or served raw. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness."

As currently permitted, a statement used under that provision could be tailored to be product-specific if a food establishment either had a limited menu or offered only specific animal-derived foods in raw or undercooked, ready-to-eat form.

Trans Fat Information

Under the bill, a food service establishment could, but would not be required to, provide on the selection information, so that it was publicly available, a statement regarding the presence or lack of artificial trans fat in any food served by the food establishment. That statement could be tailored to be product-specific if a food service establishment had a limited menu.

For the purpose of this provision, "artificial trans fat" would mean an unsaturated fat or fatty acid that was produced by the partial hydrogenation of plant oils and that

contained one or more instances of atoms bonded in a trans configuration.

"Publicly available" would mean accessible to consumers, without their having to request it, before placing their food orders or making their selections.

"Selection information" would mean whatever consumers read to make their order selections, such as a menu, table tent, placard, chalkboard, or other written means.

Smoked Fish Producers

The Law waives the requirement that a processor of smoked fish obtain a variance under the smoked fish rules if the processor demonstrates compliance with 21 CFR Part 123. (Part 123 deals with fish and fishery products. Section 6 of that part requires every processor to have and implement a Hazard Analysis Critical Control Point (HACCP) plan.)

The bill would require all seafood processors to comply with the regulations in 21 CFR Part 123. The requirement that a processor of smoked fish comply with the smoked fish rules would be waived if the processor demonstrated compliance with this Federal regulation.

Juice Processors

The bill would require all processors of juice to comply with the FDA regulations in 21 CFR 120 (which deals with HACCP systems).

An establishment that presses apple cider would have to have at least one active employee currently certified under a personnel certification program accredited by ANSI using the conference for food production standards, or having completed a current course recognized by the MDA as pertinent to safe cider production.

Meat & Sausage

Chapter 7 of the Food Law deals with food and processing standards, and contains definitions specific to that chapter. "Added water or ice" means greater moisture content than normally found in meat. Under the bill, "added water" would mean greater moisture content than normally found in meat, and except for poultry, would be determined by total moisture minus four

times the percentage of protein. Added water could be in the form of water or ice.

Currently, "meat" means the edible part of clean, sound striated muscle of cattle, swine, sheep, deer, goat, turkey, or chicken slaughtered in compliance with all applicable laws. The bill would add other cervids, duck, and ratite to that definition. (Ratite refers to the family of flightless birds that includes ostriches and emus. Cervids refers to the family of ruminants that includes deer, elk, and moose.) The bill also states that "meat" would not include "specified risk materials", which would mean items associated with the nervous system of beef cattle that are prohibited from human food in Federal regulations.

Under Chapter 7, sausage consists only of skeletal meat, either fresh, cured, salted, pickled, or smoked. The bill would add that poultry sausage could contain accompanying skin in natural proportions.

Sausage may contain specific ingredients that comply with applicable Federal regulations, including salt or spice, sodium or potassium nitrite, or ascorbic acid. The bill would permit cure agents such as sodium or potassium nitrite, and cure accelerators such as sodium erythorbate or ascorbic acid. Presently, "curing agent" means any substance added to meat to cause or enhance preservation of the meat product. Under the bill, that definition also would apply to "curing accelerators".

Currently, the total percentage of moisture in the finished product may not exceed four times the percentage of protein, which may not be less than 12%. The bill would eliminate the moisture content limit. Under the bill, sausage could contain no added water, except to facilitate chopping or mixing (as currently permitted for the addition of water or ice). Cooked sausage could not exceed 40% fat and added water.

Chapter 7 provides that fresh and frozen sausage and smoked and unsmoked dry sausage may contain butylated hydroxyanisole, butylated hydroxytoluene or propyl gallate, or a combination of these antioxidants, with or without citric acid, in amounts that do not exceed limits established in Federal regulations. The bill would permit sausage to contain antioxidants such as those listed above, in

amounts that complied with applicable regulations of the U.S. Department of Agriculture (USDA) Food Safety Inspection Service.

The definition of "Italian-style sausage" provides that it may contain red and green pepper, onion, and garlic. The bill also specifies that Italian sausage would contain fennel or anise.

Currently, "poultry meat sausage" must be made from fresh chicken or turkey meat containing the natural proportions of light and dark meat unless otherwise designated. If the product contains all its meat from one species, the name must be identified by the species contained. The bill would refer to fresh poultry meat rather than chicken or turkey, and the definition would apply to "poultry sausage or poultry meat sausage". Poultry-meat sausage could not contain skin.

The bill would replace the term "venison sausage" with "cervid sausage", which would have to be made from the meat of cervidae from approved sources. The name would have to be identified by the species contained if the product contained all its meat from one species, such as "venison sausage" or "elk sausage". As currently provided for venison sausage, a person could not sell, offer for sale, or expose for sale any other product described as cervid sausage, and fat of another species and approved source could be added to cervid sausage.

Under Chapter 7, "ground chicken" must consist of comminuted fresh chicken meat, with or without added chicken fat, and must not contain more than 15% fat. "Ground turkey" has a similar definition. The bill would replace those terms with "ground poultry", which would have to consist of comminuted fresh poultry meat, with or without accompanying skin in natural proportions, with or without added poultry fat. Ground poultry could not contain more than 20% fat. The name would have to be identified by the species contained in the product.

"Ground poultry meat" would have to consist of comminuted fresh poultry meat, with or without added poultry fat, and could not contain more than 15% fat. The name

would have to be identified by the species contained in the product.

Under Chapter 7, food may not contain unapproved food additives or additives that exceed amounts specified in certain Federal regulations relating to food additives, substances that exceed amounts specified in 9 CFR 318.7 (which dealt with approval of substances for use in the preparation of products, and has been repealed), or pesticides that exceed provisions specified in a Federal regulation. The bill would delete reference to 9 CFR 318.7 and refer instead to amounts established under applicable regulations of the USDA Food Safety Inspection Service.

Labeling Requirements

The Law prohibits a person from using the term "USDA" unless the official grade also is designated. The bill would remove that restriction.

In addition, a person may not advertise or display for sale any meat described by the use of the words "prime", "choice", or "good", unless the meat actually bears the USDA Federal stamp designating that grade or is of equal quality as the Federal grade would designate. Under the bill, that prohibition would apply to any words associated with grading terminology.

Currently, a person may not advertise or display for sale any ham unless the advertisement or display states whether the ham is skinned or regular. Under the bill, the advertisement or display instead would have to state whether the ham was whole, bone-in, semi-boneless, or boneless.

Under the Law, a retail food establishment may not sell or offer for sale a prepackaged perishable food unless it is stamped clearly and conspicuously with a date, either with or without explanatory terms. That provision does not prohibit the sale of food after the date if the product is wholesome and sound and is clearly identified as having passed the date. Under the bill, meat that had been removed from federally inspected retail packages could not be sold after the stamped date.

Roast Temperature

The Food Code requires whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham to be cooked in an oven preheated to a certain temperature based on the roast's weight and the type of oven. For a high-humidity oven, the Code requires a temperature of 250° F or less. The Law currently modifies this requirement to specify a temperature of 130° F or higher. The bill would eliminate that modification.

House Bill 4956 (S-2)

Food Establishment Evaluations

Under the Law, the MDA Director or his or her designee must have access to any food establishment at all reasonable hours, for the purpose of inspecting the establishment to determine if any provisions of the Law are being violated. Under the bill, the Director would have to have access for the purpose of evaluating, rather than inspecting, the establishment. Throughout the Law, the bill would replace the terms "inspection" and "reinspection" with "evaluation" and "reevaluation".

Currently, the MDA Director may take specimens of any food, after paying or offering to pay for them, to determine whether the Law has been violated, and may examine the records of an establishment to obtain pertinent information about food, supplies, and equipment used in the establishment.

The bill also would permit the MDA Director to take photographs or copy records as part of an evaluation. When a food establishment identified by written document or mark that a certain area or record contained visible trade secrets, the Director would have to identify any photographs of that area or record as being confidential and diligently protect the confidentiality.

The bill would define "evaluation" as a food safety audit, inspection, or food safety and sanitation assessment, whether announced or unannounced, that identifies violations or verifies compliance with the Law and determines the degree of active control by food establishment operators over foodborne illness risk factors.

"Food safety and sanitation assessment" would mean judging or assessing specific food handling activities, events, conditions, or management systems in an effort to determine their potential effectiveness in controlling risk factors for foodborne illness and required compliance with the Law, accompanied by a report of findings.

"Food safety audit" would mean the methodical examination and review of records, food sources, food handling procedures, and facility cleaning and sanitation practices for compliance with the Law, accompanied by a report of findings. The term would include checking or testing, or both, of observable practices and procedures to determine compliance with standards contained in or adopted by the Law, accompanied by a report of findings.

"Inspection" would mean the checking or testing of observable practices against standards established in or adopted by the Law, accompanied by a report of findings.

Sanitation Program Reviews

The Law requires the MDA to conduct periodic comprehensive evaluations of each local health department's food service sanitation program. The bill would refer, instead, to comprehensive "reviews" of each local program.

The MDA must charge certain fees for inspections of a food establishment and other services. The bill would increase the fee for a special transitory food unit plan review from \$177 to \$197. The fee for a plan review as specified in Section 8-201.11 of the Food Code also would be \$197. (Section 8-201.11 requires a food establishment permit holder to submit plans and specifications for review and approval before the construction of a food establishment, the conversion of an existing structure for use as a food establishment, or the remodeling of a food establishment or a change of type of food establishment under certain circumstances.)

Under the Law, the fees collected for inspections and other services must be deposited in the State's General Fund and credited to the MDA for enforcement of the Law. The bill instead would require the fees to be deposited in the proposed Dairy and Food Safety Fund for the same purpose.

Employee Certification

Currently, upon request, the MDA may review and issue approval of food safety training materials and programs, including home study programs and computer-assisted training. Approval of such materials or programs expires after three years. To receive MDA approval, a food safety training material must contain the following:

- Accuracy and consistency with the Food Law and the Food Code.
- Manager knowledge training that includes the knowledge requirements in Section 2-102.11 of the Food Code.

(Section 2-102.11 requires the person in charge of a food establishment to demonstrate, during inspections and on request, knowledge of foodborne disease prevention, application of the HACCP principles, and the requirements of the Food Code.)

The issuance date for each original certificate issued under an approved food safety training program is the date the individual successfully completes the examination. A certificate expires five years from the date of original issuance. Certified individuals may be recertified by passing a food safety certification exam or through an approved recertification program.

An individual certified under a training program approved under these provisions must be recognized with full faith and credit by a local unit of government throughout the State.

The bill would delete all of the provisions described above.

Beginning June 30, 2009, the bill would require the following food establishments to employ at least one managerial employee who currently was certified under a personnel certification program accredited by the American National Standards Institute, using the conference for food production standards:

- A food service establishment that was not: a mobile food establishment, operating under a temporary food service establishment license, a vending machine location, or a special transitory food unit.

- An extended retail food establishment.
- A food service establishment operated within a retail grocery.

An individual certified under those provisions would have to be recognized with full faith and credit by the State and all local units of government throughout the State.

The MDA would have to promulgate rules to do all of the following:

- By January 1, 2009, develop requirements for retail food establishments to follow when employing certified food safety managers or personnel.
- Implement and enforce those requirements.
- Set a reasonable date for compliance with the requirements, taking into consideration existing local personnel certification requirements.
- Establish certification fees necessary to implement, maintain, and track certified individuals directly or by contract.

The MDA could adjust the fee schedule annually to provide that the fee charged was sufficient to cover the cost of the certification tracking program.

The certification program developed by ANSI as it existed on the bill's effective date would be incorporated by reference. The MDA could adopt updates to the certification program accreditation standards by rule.

State License Fees

The Law requires the MDA to delegate the authority and responsibility for enforcing the requirements pertaining to food service establishments to local health departments that meet specific program criteria. An applicant for a food service establishment license must pay certain fees to the local health department, and an additional State license fee. The bill would increase the State license fees as shown in Table 1.

Table 1

Food Service Establishment	Current Fee	Proposed Fee
Vending machine location fee	\$2.50	\$3
Temporary food service estab.	\$2.50	\$3
Food service estab.	\$19	\$22
Mobile food estab. commissary	\$19	\$22
Special transitory food unit	\$30	\$35

Currently, when licensing a special transitory food unit, a local health department must impose a fee of \$117, which includes the additional State license fee, unless the establishment is exempt from those fees under certain provisions. The bill would increase that fee to \$135.

Under the Law, a school or other educational institution is exempt from paying the license fee to the local health department and the additional State license fee. The bill would remove that exemption.

Frequency of Evaluations

Under the Law, an unannounced compliance inspection of each food service establishment must be performed at least once every six months by a regulatory authority (the MDA, the local health department, or the authorized representative with jurisdiction over the establishment).

The bill instead would require a compliance evaluation of each food service establishment to be performed by the MDA Director at least once every six months or as required by a statewide Department-approved risk-based schedule. (The Law's definition of "director" includes his or her designee.) Risk-based schedules would have to be developed in consultation with local health departments.

In addition, the Law requires a food service establishment that operates for nine or fewer months each year to be inspected at least once during the period of operation by a regulatory authority. Under the bill, that inspection would have to be conducted by the MDA Director, and the establishment would have to be inspected at least once during the period of operation or as

prescribed in the Department's risk-based schedule.

Currently, a local health department may not reduce the minimum frequency of inspections of any food service establishment to less than once each 12 months. Under the bill, evaluations of food service establishments could not be reduced below the required frequency described above, unless approved by the MDA.

The Law requires the MDA to conduct a general review and evaluation of reports and related data made by certified health departments as often as considered necessary. The MDA must report a review or evaluation disclosing adverse findings in writing to the health officer of the certified health department within 30 days. Under the bill, the reporting requirement would apply only to a review disclosing adverse findings.

Licensure Requirements

Under the Law, a person may not operate a food establishment unless licensed by the MDA. Separate areas for food service or preparation located in one building and operated under one management are considered one food establishment, requiring only one license. The bill would require the separate areas to be "actively operated" under one management to be considered one food establishment. The MDA Director could require separate licenses for those areas if they were managed separately, even though under the same owner.

The Law requires an applicant to submit an application for a food establishment license at least 30 calendar days before its opening, the change of ownership, or the expiration of the current license. The bill would remove the reference to the expiration of the current license. The bill also provides that for temporary food establishments applying less than four days from opening, the MDA Director could charge twice the applicable license fee to perform the licensing evaluation.

Currently, an application for a food establishment license must be submitted on forms furnished by the MDA. Under the bill, the forms would have to be approved, rather than furnished, by the Department.

The Law exempts from licensure a produce stand that offers only whole uncut fresh fruits and vegetables. Under the bill, that exemption would apply to a person that was offering those products directly to consumers.

In addition, consumers or nonprofit cooperatives of consumers providing products only for their own use are exempt from the licensure requirements. Under the bill, the exemption would apply to cooperatives in compliance with the Nonprofit Corporation Act providing products from regulated sources.

Nonprofit cooperatives of growers or producers selling unprocessed products of their own production also are exempt from licensure. The bill would exempt nonprofit cooperatives in compliance with the Nonprofit Corporation Act that were either growers selling unprocessed products of their own production or producers selling unprocessed products of their own production from regulated sources.

The bill also would exempt the following:

- A mobile food establishment, such as an ice cream truck, that offered only prepackaged, single-serving frozen desserts.
- An event not open to the general public held by a trade organization representing food establishments, suppliers, or manufacturers, where limited food preparation took place for the purpose of advertising, displaying, promoting, or sampling prepared food.
- Feeding operations set up in response to an emergency or disaster.

Federal Food Code

The Food Code consists of recommendations of the U.S. Food and Drug Administration (FDA) regulating the design, construction, management, and operation of food establishments. Chapter 6 of the Law (Standards for Food Establishments) incorporates Chapters 1 through 8 of the 1999 Food Code by reference, with certain modifications. The bill would incorporate those chapters of the 2005 Food Code, subject to modifications.

Definitions

The bill would define "milk product" as cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, cultured sour half-and-half, reconstituted or recombined milk or milk products, skim milk, lowfat milk, frozen milk concentrate, eggnog, buttermilk, cultured milk, cultured lowfat milk, cultured skim milk, yogurt, lowfat yogurt, nonfat yogurt, acidified milk, acidified lowfat milk, acidified skim milk, low-sodium milk, low-sodium lowfat milk, low-sodium skim milk, lactose-reduced milk, lactose-reduced lowfat milk, lactose-reduced skim milk, aseptically processed and packaged milk, milk products with added safe and suitable microbial organisms, and any other milk product made by the addition or subtraction of milkfat or addition of safe and suitable optional ingredients for protein, vitamin, or mineral fortification. The term would include dietary dairy products, dairy-based infant formula, ice cream and other frozen desserts, cheese, butter, and any other product derived from milk.

Under the bill, "juice" would mean the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.

"Bed and breakfast" currently means a private residence that offers sleeping accommodation to transient tenants in 14 or fewer rooms for rent, and serves breakfasts at no extra cost to its tenants. Under the bill, a bed and breakfast also could serve other meals, if it had 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, one or more of which were available for rent by transient tenants.

Under the Law, the definition of "food service establishment" includes a fixed or mobile restaurant, coffee shop, cafeteria, and a number of other specific types of establishments, excluding a food concession. The bill would add food concession to the definition.

Currently, "food concession" means a food storage, preparation, or dispensing operation at a State or county fair. Under

the bill, that definition would apply to "fair concession", instead.

Repeals

The bill would repeal Sections 1115, 1117, and 6151 of the Law, effective April 1, 2008.

Section 1115 repealed several statutes, effective six months after the Law was enacted.

Section 1117 pertains to the Law's effective date and the effective dates of certain requirements within the Law.

Section 6151 concerns alternative practices and procedures to be followed when employees have bare-hand contact with ready-to-eat food, as permitted under Section 3-301.11(B) of the Food Code. (In the 1999 Food Code, that section provides that except when washing fruits and vegetables *or when otherwise approved*, employees may not contact exposed, ready-to-eat food with their bare hands. In the 2005 Food Code, Section 3-301.11 includes specific circumstances in which food employees may contact ready-to-eat food with their bare hands.)

MCL 289.4111 et al. (S.B. 595)
289.1105 (H.B. 4956)

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

The bills would adopt by reference the most recent Food Code, which includes best practices and the latest scientific understanding of food risks developed by the FDA. In the years since the 1999 Food Code was approved, there have appeared significant new threats, including adulterated food imported from China, as well as outbreaks of *e. coli* from contaminated spinach. In addition, many public health officials are concerned about the potential for bioterrorism aimed at the nation's food supply. The Food Code includes stricter policies to help manage those risks, while also accommodating new technologies and techniques in the food service industry. New processes such as *sous vide* cooking (a technique for cooking meat sealed in

vacuum pouches, immersed in a water bath) were not covered in the 1999 Food Code, but are included in the 2005 version. By incorporating the latest Food Code, the bills would ensure that public health officials were following the best available guidance from the FDA.

Although all states have adopted some version of the Food Code, only four (Alaska, Mississippi, Wisconsin, and Wyoming) had adopted the 2005 version as of February 2007, according to the FDA. Incorporating the latest version would put Michigan among the states that are at the forefront of food safety practices.

Supporting Argument

The current requirements for scheduling inspections of food service establishments do not serve the best interests of the public. The requirements are inflexible and fail to take into account the prior food safety record or inherent risks at a particular food establishment. The bills would give health officials more discretion in scheduling evaluations, allowing them to devote more of their time to the highest-risk establishments. If a particular location has a history of good management practices and is engaged in low-risk activities, it would be reasonable to schedule less frequent inspections than required for a restaurant with a history of food handling violations. Public health officials operate on limited schedules and resources, and conducting evaluations based on the highest risk would be the most effective way to provide the maximum food safety within those constraints. In addition, the bills would change the way that evaluations are conducted, requiring health officials to identify the most likely sources of foodborne illness within the process and focusing on those areas. The 2005 Food Code places a greater emphasis on keeping records and demonstrating good food handling practices as part of a food establishment's regular operations. Currently, inspectors are able to observe only what is happening during a site visit, with a limited ability to monitor the day-to-day operations of the facility. The bills also would allow a public health official to review the documentation to ensure that the proper procedures were being followed on a regular basis. These measures could help to protect the quality of food on a consistent basis.

In addition, House Bill 4956 (S-2) would allow announced as well as unannounced inspections. In some cases, scheduling an evaluation ahead of time could be most beneficial for the manager, as well as the public health official. Restaurants can be extremely busy during hours of peak operation, and it is difficult under those circumstances for a manager to focus on the evaluation and discuss possible improvements with the inspector. Under the bill, the visit could be set for a slower time when the official could work actively with the manager to explain any deficiencies and the necessary steps that would need to be taken to rectify those problems. In that way, the evaluations could be more of an educational process than a punitive experience.

Also, the 2005 Food Code requires food service managers to demonstrate knowledge of food allergens and risk factors for foodborne illness, and explain proper procedures for managing those risks. To ensure that managers had the appropriate background, House Bill 4956 (S-2) would require at least one managerial employee for each food establishment to be certified under the ANSI food safety and protection certification program. That person could then share his or her knowledge with the rest of the staff and help to ensure that the establishment's procedures were appropriate and safe.

Supporting Argument

Noroviruses have become a serious concern in recent years, not just in Michigan, but across the country. Previously called "Norwalk-like viruses" (named after Norwalk, Ohio, where the first identified outbreak occurred), the viruses are highly infectious and can cause nausea, vomiting, diarrhea, and stomach cramps, according to the Centers for Disease Control and Prevention. Norovirus is found in the stool and vomit of an infected person, and can be transmitted when someone comes into contact with an infected person, or touches an object contaminated with the virus. According to the Department of Community Health (DCH), the virus can survive on surfaces for about 21 to 28 days at room temperature.

The number of reported outbreaks of norovirus in Michigan increased from 34 in 2005 to 144 in 2006, according to the DCH. Outbreaks in restaurants accounted for 29,

or about 20%, of the 2006 incidents. (Health care facilities are the most common source of norovirus outbreaks, accounting for about 57% of the reported outbreaks in Michigan in 2006.) Although the reasons for the recent upsurge are not completely clear, a spokesperson for the DCH said that the Department had seen a cyclical pattern of increased rates of infection in 1996, 2002, 2004, and 2006, associated with particularly virulent strains of the virus, collectively known as G-II-4 variants.

Steps that can be taken to reduce the risk of transmitting norovirus include frequent handwashing, disinfecting contaminated surfaces, clothing, or linens, and staying home while ill. Because the virus is contained in the stools and vomit of infected individuals, it is particularly important that those people not be in the workplace while infected. Though many of these activities are part of current food safety practices, the 2005 Food Code includes updated food safety requirements that address these and other potential causes of foodborne illness. In addition, requiring each food establishment to have at least one manager who was trained in food safety procedures could help to minimize the risk of norovirus or other outbreaks in restaurants in the State.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 595 (S-2)

The bill would establish the Dairy and Food Safety Fund to receive license fee revenue. Under current law, the revenue is deposited into the General Fund with the amount credited to the MDA as a part of its appropriation. In actuality, the revenue is credited to the License and Inspection Fees Fund within the Department. The bill would codify the current practice and create a central fund for food safety-related revenue. Fines and cost collections also would be credited to the new fund rather than the General Fund. The fiscal impact of these two revenue sources cannot be determined as the number of future violations is not known.

The bill also would authorize the MDA to charge a convenience fee for costs associated with method of payment of other

fees (e.g., paying in person rather than on-line). While the rate of this fee is not specified in the bill, it would have to be set at a level to cover the actual costs to the Department. As a result, there would be no fiscal impact.

House Bill 4956 (S-2)

As a part of the overall update of the Food Law, the bill would increase various fees statutorily to reflect more accurately the fees actually being charged. Under current law, the Department may adjust fees annually by an amount related to the Detroit Consumer Price Index without seeking legislation. As a result, the statutory fee rates are not the rates actually being charged. The bill simply would bring the statutory rates to the level of the actual fee rates. Because of this, the bill would have a minimal fiscal impact on the Department. The statutory rate increases are outlined below.

Fee	Current Rate	Proposed Rate
Special Transitory Food Unit Plan Review	\$177	\$197
Plan Review under USDA Food Code Sec. 8-201.11	NA	\$197
Vending Machine Location State License Fee	\$2.50	\$3
Temporary Food Service Estab. State License Fee	\$2.50	\$3
Food Service Estab. State License Fee	\$19	\$22
Mobile Food Estab. Commissary State License Fee	\$19	\$22
Special Transitory Food Unit State License Fee	\$30	\$35
Special Transitory Food Unit – Local Fee - includes State license fee listed above	\$117	\$135

The bill also would authorize the MDA to charge a fee for food service managerial personnel who wished to be certified under a program accredited by the American National Standards Institute. While the rate of the fee is not specified in the bill, it would have to be set at a level to cover the actual costs to the Department. As a result, there would be no fiscal impact.

Fiscal Analyst: Debra Hollon

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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.