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## **OLR Bill Analysis**

**sSB 57 (File 103, as amended by Senate "A")\***

### ***AN ACT CONCERNING THE LICENSURE OF FOOD MANUFACTURING ESTABLISHMENTS.***

#### **SUMMARY:**

This bill creates a new food manufacturing establishment license. It places requirements substantially similar to those for an existing bakery on these new licenses. It adds a penalty for bakeries that violate bakery laws and extends them to food manufacturer establishments. It also removes certain bakery sanitation condition requirements.

It requires each establishment to be designed, constructed, and operated as the Department of Consumer Protection (DCP) commissioner directs under the Uniform Food, Drug, and Cosmetic Act and laws regulating bakeries.

The bill specifies that it does not prevent local health authorities from enforcing orders or regulations concerning the establishment's sanitary conditions.

\*Senate Amendment "A" clarifies the food manufacturing establishment definition.

EFFECTIVE DATE: July 1, 2012

#### **FOOD MANUFACTURER ESTABLISHMENT**

Under the bill, a food manufacturing establishment is a building or part of one where food is prepared for sale to other establishments for human consumption. It defines "prepared" as a process of canning, cooking, freezing, dehydration, or milling. The bill exempts facilities that (1) are used solely for the retail sale or storage of prepackaged food; (2) are certified farmers' markets; (3) are residential farms that produce acidified food products, jams, jellies, and preserves; (4)

produce nonalcoholic beverages; (5) produce or market milk or milk products; (6) produce foods regulated under the laws concerning pure food and drugs (e.g., kosher food, butter, and frozen desserts); (7) conduct certain activities under the agriculture department's jurisdiction; (8) grade and market farm products; and (9) are state shellfisheries.

### ***License***

The bill requires any person, firm, or corporation that operates a food manufacturing establishment with the intent of producing products for human consumption to receive a DCP license. It also prohibits selling or distributing food produced in an establishment located in the state unless it is licensed.

Under the bill, the DCP commissioner must provide application forms that show the name and address of the establishment. He must direct an inspection of the premises and if conditions are satisfactory, issue a license. The license is valid for one year and costs \$20.

### ***Local Zoning***

The bill requires anyone who wants either a bakery or food manufacturing establishment license to first obtain and present to the commissioner a certificate of approval for the desired location. The certificate must be obtained from the zoning commission, planning and zoning commission, or local authority of the town, city, or borough where the facility is located or proposed to be located. The certificate is not required when the last-issued license is being transferred from one person to another or when a license is renewed by the license holder. The commissioner must not issue any license for which a certificate is required until the applicant obtains the certificate.

### ***License Revocation, Suspension, and Denial***

Under the bill, a license may be revoked for violating the law's existing bakery requirements, after a hearing by the commissioner. All hearings must be held in accordance with the Uniform Administrative Procedure Act.

A license may also be summarily suspended pending a hearing if the commissioner has reason to believe that the public health, safety, or welfare requires emergency action. Within 10 days of the suspension order, the commissioner must hold a hearing. After the hearing, the commissioner must dissolve the suspension or order license revocation. Anyone whose license has been revoked may reapply and the commissioner must act on it within 30 days of receipt. The applicant who had his or her license revoked must pay, based on the commissioner's determination, any inspection costs needed to determine whether a new license should be granted.

The commissioner may refuse to grant a license if he or she finds the applicant has a pattern of noncompliance. In an administrative hearing, *prima facie* evidence of a pattern of noncompliance is established if the commissioner shows the applicant has had two license revocations.

### ***Cleanliness***

Under current law, bakeries are prohibited from knowingly allowing anyone with pulmonary tuberculosis, scrofulous or venereal disease, communicable skin affection, diphtheria, dysentery, paratyphoid fever, poliomyelitis, scarlet fever, smallpox, streptococcus sore throat, typhoid fever, tuberculosis, gonorrhoea, or syphilis from working, unless the health director gives written authorization stating that public health is not endangered. For both bakeries and food manufacturing establishments, the bill substitutes pathogens contained in the Centers for Disease Control's (CDC) "List of Infectious and Communicable Diseases which are Transmitted Through the Food Supply," in place of these listed diseases. The CDC list has pathogens (i.e., virus or bacteria) that often or occasionally are transmitted by food contaminated by infected persons, rather than specific diseases.

As with bakeries under existing law, the bill (1) requires food manufacturing establishment employers to maintain themselves and their employees in a clean and sanitary condition and (2) prohibits anyone from smoking when working.

Under the bill, the commissioner or his authorized agents may order any person employed by a bakery or establishment to be examined by a licensed physician if there is reason to believe an employee has a condition that may transmit a food-borne illness. Current law conditions the examination on the reasonable belief the bakery employee has one of the previously listed diseases.

***DCP Notice***

The bill requires establishments to comply within 30 days of receiving notice of DCP orders or cease using the facility. The notice must be in writing and may be served on the owner, agent, or lessee, either personally or by mail. Mailing a notice by registered or certified letter to the last-known address is sufficient service.

***Penalties***

Under the bill, anyone who violates any of its provisions or bakery regulations, or fails to comply with an order from the commissioner, is subject to a fine of at least \$50 for the first offense, up to \$100 or up to 10 day's imprisonment for the second offense, and up to \$200 or up to 30 day's imprisonment for subsequent offenses.

Under the bill, as with the bakeries under current law, the commissioner may apply to Superior Court for a temporary or permanent injunction enjoining anyone from operating a food manufacturing establishment without a DCP license, regardless of whether there is an adequate remedy at law. He may also apply to the Superior Court for, and the court has jurisdiction to grant, a temporary restraining order pending a hearing. The attorney general must apply for such injunctive or other appropriate relief.

The bill allows the commissioner, after providing notice and conducting a hearing, to issue a warning citation or impose a civil penalty on both bakeries and food manufacturing establishments. He may issue civil penalties of up to \$100 for the first offense and up to \$500 for each subsequent offense on anyone who violates any bakery law or regulation.

## **BAKERY**

### ***Sanitary Conditions***

The bill removes the requirement that each building or room used as a bakery be situated so that it is not exposed to contamination from its surroundings; be drained and plumbed in a healthful and sanitary manner; be adequately lit; and have airshafts, windows, or ventilating pipes, ensuring ventilation, as the commissioner directs.

Under the bill, bakeries are no longer required to provide a washroom and lavatory facility away from the bake room or other room that manufactures food. It also removes requirements (1) that all the rooms be a height adequate for proper ventilation; (2) identifying the type of material the walls and ceilings are made of; (3) that doors and other openings be tightly screened in the summer; (4) that furniture, utensils, and floors be kept in a sanitary condition; and (5) on animal control.

The bill also eliminates certain requirements on sanitary conditions for producing baking products by specifying how certain products are to be used and stored. Finally, it removes the requirement that sleeping rooms be separate from the baking rooms.

### ***Underground Rooms***

The bill allows bakeries to use rooms that are either wholly or partly underground to be used as bakeries, which is prohibited under current law.

## **BACKGROUND**

### ***Related Bill***

sHB 5145 (File 602) changes the penalties for bakery violations, making a first violation subject to a fine of up to \$250 payable by mail like an infraction and a subsequent violation a class D misdemeanor (a new classification created by the bill punishable by up to 30 days in prison, a fine of up to \$250, or both) (§ 147).

## **COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/13/2012)

Planning and Development Committee

Joint Favorable

Yea 19 Nay 0 (04/16/2012)

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (04/25/2012)