

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 12-95—sSB 57**

*General Law Committee*

*Planning and Development Committee*

*Judiciary Committee*

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

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

The act requires each establishment to be designed, constructed, and operated as the Department of Consumer Protection (DCP) commissioner directs under the act and the state Uniform Food, Drug, and Cosmetic Act. It generally requires both bakeries and food manufacturing establishments to get local zoning approval before they can be licensed.

The act specifies that it does not prevent local health authorities from enforcing orders or regulations concerning the establishment's sanitary conditions. It also requires the DCP commissioner to adopt regulations to supplement the act, including its food manufacturing establishment provisions.

EFFECTIVE DATE: July 1, 2012

**FOOD MANUFACTURING ESTABLISHMENT**

*Covered Establishments*

Under the act, 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 act exempts facilities that are used solely for the retail sale or storage of prepackaged food, and facilities that:

1. are residential farms that produce acidified food products, jams, jellies, or preserves;
2. are certified farmers' markets;
3. produce foods regulated under the laws concerning pure food and drugs (e.g., kosher food, vending machines, and frozen desserts);
4. produce nonalcoholic beverages;
5. conduct certain activities under the agriculture department's jurisdiction;
6. grade and market farm products;
7. produce or market milk or milk products; and
8. are state shellfisheries.

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### *License*

The act requires any person, firm, or corporation that operates a food manufacturing establishment intending to produce products for human consumption to have a license from DCP. It also prohibits selling or distributing food produced in an establishment located in the state unless it is licensed.

Under the act, 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 act 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 or is proposed to be located. The certificate is not required when (1) the last-issued license is being transferred from one person to another or (2) a license holder renews his or her license. The commissioner must not issue any license for which a certificate is required until the applicant obtains the certificate.

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

A license may be revoked for a violation of the act's requirements, after the commissioner holds a hearing 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 which he 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. An applicant who has had his or her license revoked must pay any inspection costs set by the commissioner for determining whether a new license should be granted.

The commissioner may refuse to grant a license if he 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 prior law, bakeries were 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, gonorrhea, or

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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 act substitutes pathogens (i.e., virus or bacteria) 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 that often or occasionally are transmitted by food contaminated by infected persons, rather than specific diseases.

As with bakeries under existing law, the act (1) requires food manufacturing establishment employers to maintain themselves and their employees in a clean and sanitary condition, with clean, washable outer clothing when manufacturing, handling, or selling food products and (2) prohibits anyone from smoking when working.

Under the act, the commissioner or his authorized agents may order any person employed by a bakery or food manufacturing 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. Prior law conditioned an examination on the reasonable belief the bakery employee had one of the previously listed diseases.

### *DCP Notice*

The act requires food manufacturing 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. These notice requirements already apply to bakeries.

### *Penalties*

Under the act, anyone who violates any of its provisions or related regulations, or fails to comply with an order from the commissioner, is subject to a fine of up to \$50 for the first offense, up to \$100 or up to 10 days' imprisonment for the second offense, and up to \$200 and up to 30 days' imprisonment for subsequent offenses. As of October 1, 2012, PA 12-80 increases the penalties for these violations, making a first violation subject to a fine of up to \$250 and a subsequent violation a class D misdemeanor (a new classification created by PA 12-80, punishable by up to 30 days' imprisonment, a fine of up to \$250, or both) (§ 147).

Under the act, as with bakeries under existing law, the commissioner may apply to Superior Court, through the attorney general, for a temporary or permanent injunction enjoining anyone from operating a food manufacturing establishment without a DCP license. He may also apply to the Superior Court for a temporary restraining order pending a hearing.

The act also 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

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the first offense and up to \$500 for each subsequent offense on anyone who violates any bakery or food manufacturing establishment law or regulation.

### BAKERY

#### *Sanitary Conditions*

The act removes certain bakery sanitation requirements, but other public health sanitation regulations still apply. The act eliminates 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 act, bakeries are no longer required to provide a washroom and lavatory facility away from the baking 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 vermin.

The act 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 act allows bakeries to use rooms that are either wholly or partly underground to be used as bakeries. Under prior law, these rooms could not be used unless the lighting, ventilation, exit, and outside surrounding of the rooms conformed to regulations.

OLR Tracking: DC:JO:MJ:ts:eh