



Legislative Council Staff Research Note

Version: Final
Date: 5/19/2016

Bill Number

House Bill 16-1401

Sponsors

**Representatives Becker K.
& Priola
Senators Woods & Hodge**

Short Title

***Retail Food Establishment
Licensure & Inspection***

Research Analyst

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Status

This research note reflects the final version of the bill which becomes effective August 10, 2016, assuming no referendum petition is filed.

Summary

The bill increases the annual licensing fees paid by retail food establishments beginning January 1, 2017. Additional increases on January 1, 2018, and January 1, 2019, are contingent upon compliance with the requirements explained below.

For the second fee increase to be effective on January 1, 2018, the Colorado Department of Public Health and Environment (CDPHE) must establish a uniform system to communicate health inspection reports to the public, and the CDPHE and local public health agencies must exclusively use the system to communicate inspection results by July 1, 2017. If the requirements are not met, this fee increase and the subsequent fee increase will be delayed.

For the third fee increase to be effective on January 1, 2019, the previous requirement must be met and the CDPHE must by April 1, 2017, respond to all retail food establishment plans and specifications and Hazard Analysis Critical Control Point Principles plan reviews within 14 working days. If this requirement is not met, the fee increase will be delayed.

The bill creates a new license for a limited retail food establishment that prepares or serves food that does not require time or temperature control for safety, provides self-service beverages, offers prepackaged commercially prepared food and beverages requiring time or temperature control, or only reheating commercially prepared foods that require time or temperature control for safety for retail sale to consumers. The CDPHE is required to ensure significant statewide compliance with the federal Food and Drug Administration's voluntary National Retail Food Regulatory Program standards by December 31, 2019.

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The bill specifies that counties may only spend the revenue from the increased fees on retail food health-related activities. The bill lowers the maximum period of suspension for a retail food establishment license from six months to one month, except in cases of closure due to an imminent health hazard. Finally, the bill allows the CDPHE or a local public health agency to issue cease-and-desist orders when a civil penalty has previously been issued and the person remains noncompliant.

Background

Retail food establishment inspections. State law requires retail food establishments to obtain a license before operating any business that sells food to the public. Retail food establishments include restaurants, catering operations, grocery stores, convenience stores, concession stands, and food trucks. Most counties issue their own licenses for food operations within the county. The CDPHE issues licenses and conducts inspections for retail food establishments in Clear Creek, Grand, Gunnison, Jackson, Moffat, and Rio Blanco counties.

Retail food establishment licensing fees. Licensing fees are assessed annually and vary based on the type of license and the seating capacity or square footage of the establishment. Current retail food establishment licensing fees vary from \$115 to \$690 annually, and are established in statute. Colorado law permits the City and County of Denver to establish its own licensing fees by ordinance.

State and local public health agency food safety programs are funded by licence fees for retail food establishments. Forty-three dollars of each fee collected is applied to the Food Protection Cash Fund in the CDPHE to cover the administrative costs of the licensing program, to investigate complaints filed against licensees, to promulgate rules by the State Board of Health related to food safety, to develop and enforce uniform statewide food safety standards, and to provide technical assistance and training related to the implementation of food safety regulations. The remainder of the licensing fee is retained by the local public health agency or, in the case of the counties listed above, by the CDPHE for the costs of inspections. When shortages in funding occur, counties make up the deficit with general funds. The General Assembly last increased fees in 2009.

House Bill 15-1226. The bill required the executive director of the department to convene, no later than June 15, 2015, a stakeholder group, including representatives from local public health agencies, and retail food establishments, and county commissioners, to study various issues related to retail food establishments. The stakeholder group was required to report its findings by December 1, 2015, and must report every three years thereafter.

The report issued by the group contained a discussion of the following issues:

- the uniform application of Colorado's Food Protection Act, and the adoption of the federal Food and Drug Administration's Voluntary National Retail Food Regulatory Program Standards as Colorado's standards;
- achieving a singular method for local public health agencies to communicate inspection results to the public that does not include the use of letter grades; and
- increasing the annual licensing fees paid by retail food establishments, and evaluating the current fee structure and licensing categories.

House Action

House Business Affairs and Labor Committee (April 5, 2016). At the hearing, representatives of the Department of Public Health and Environment, Weld and Larimer counties,

the Colorado Association of Local Public Health Officials, the Colorado Restaurant Association, the Colorado Hotel and Lodging Association, the Rocky Mountain Food Industry Association, and Colorado Wyoming Petroleum Marketers and Convenience Store Association testified in support of the bill. A representative of Colorado Counties Inc., testified regarding the bill. The committee referred the bill, unamended, to the House Committee of the Whole.

House second reading (April 7, 2016). The House passed the bill on second reading with no amendments.

House third reading (April 8, 2016). The House passed the bill on third reading with no amendments.

Senate Action

Senate Business, Labor, and Technology Committee (April 25, 2016). At the hearing, representatives of the Colorado Association of Local Public Health Officials, the Department of Public Health and Environment, the Colorado and Wyoming Petroleum Marketing Association, the Rocky Mountain Food Industry, the Colorado Restaurant Association, and the Colorado Hotel and Lodging Association spoke in support of the bill. A representative of Weld County and Colorado Counties Inc. spoke in opposition to the bill unless amended. The committee referred the bill, unamended, to the Senate Committee of the Whole.

Senate second reading (April 27, 2016). The Senate adopted amendment No. 1 and passed the bill on second reading, as amended. Amendment No. 1 made technical corrections to the bill.

Senate third reading (April 28, 2016). The Senate adopted amendment No.1 and passed the bill on third reading, as amended. Amendment No. 1 made technical corrections to the bill.

Relevant Research

Colorado Department of Public Health and Environment, HB 1226 Findings and Conclusions "Concerning Annual License Fees for Retail Food Establishments", December 1, 2015.