

State of Wisconsin



2017 Assembly Bill 536

Date of enactment: April 3, 2018
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2017 WISCONSIN ACT 225

AN ACT to renumber and amend 97.30 (4); to amend 20.115 (1) (gb), 97.01 (15p), 97.01 (15s), 97.30 (2) (a), 97.30 (2) (c), 97.30 (3) (a), 97.30 (3) (am), 97.30 (3) (b), 97.30 (3) (c), 97.30 (3) (d), 97.41 (4) (a) and 97.41 (5); and to create 97.01 (9m), 97.01 (9q), 97.01 (14g) (i), 97.30 (2) (d), 97.30 (3s), 97.30 (4) (b) and 97.41 (4) (c) of the statutes; relating to: licensing micro markets and providing an exemption from emergency rule procedures.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.115 (1) (gb) of the statutes is amended to read:

20.115 (1) (gb) *Food, lodging, and recreation.* The amounts in the schedule for the regulation of food, lodging, and recreation under chs. 93, 97 and 98. All moneys received under ss. 93.06 (1r) and (1w), 93.09, 93.11, 93.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.24, 97.27, 97.29, 97.30 (3) (a), (b) and (c) and (3s), 97.41, 97.60 to 97.653, 97.67, 98.145 and 98.146 for the regulation of food, lodging, and recreation shall be credited to this appropriation.

SECTION 2. 97.01 (9m) of the statutes is created to read:

97.01 (9m) "Micro market" means any indoor, unstaffed, self-service area that is accessible only to persons authorized by the person in control of the premises and not accessible to the general public, where a customer may obtain unit servings of food or beverage either in bulk or in package before payment at an automated kiosk or by other automated method, without the necessity of replenishing the area between each transaction. "Micro market" does not include a vending machine and does not include a device which dispenses only bottled,

prepackaged, or canned soft drinks, a one-cent vending device, a device dispensing only candy, gum, nuts, nut meats, cookies, or crackers, or a device dispensing only prepackaged Grade A pasteurized milk or milk products.

SECTION 3. 97.01 (9q) of the statutes is created to read:

97.01 (9q) "Micro market operator" means the person maintaining a place of business in the state and responsible for the operation of one or more micro markets.

SECTION 4. 97.01 (14g) (i) of the statutes is created to read:

97.01 (14g) (i) The serving of food or beverage through a licensed micro market.

SECTION 5. 97.01 (15p) of the statutes is amended to read:

97.01 (15p) "Vending machine" means any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. "Vending machine" does not include a micro market or a device which dispenses only bottled, prepackaged, or canned soft drinks, a ~~one-cent~~ one-cent vending device, a vending machine dispensing

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

only candy, gum, nuts, nut meats, cookies, or crackers, or a vending machine dispensing only prepackaged Grade A pasteurized milk or milk products.

SECTION 6. 97.01 (15s) of the statutes is amended to read:

97.01 (15s) “Vending machine commissary” means any building, room or place where the food, beverage, ingredients, containers, transport equipment or supplies for vending machines or micro markets are kept, handled, prepared or stored by a vending machine or micro market operator. “Vending machine commissary” does not mean any place at which the operator is licensed to manufacture, distribute or sell food products under this chapter.

SECTION 7. 97.30 (2) (a) of the statutes is amended to read:

97.30 (2) (a) *Requirement.* Except as provided under par. (b), no person may operate a retail food establishment without a valid license issued by the department or an agent city or county. Except as provided in par. (am), licenses expire on June 30 annually, except that a license issued for a new retail food establishment on or after March 30 but before July 1 expires on June 30 of the following year. Each retail food establishment shall have a separate license. A license is not transferable between persons or establishments. Application for a license shall be made on a form provided by the department, or by the agent city or county, and be accompanied by the applicable fees required under sub. (3) or (3s) or s. 97.41. An application shall indicate whether food processing is conducted at the establishment and shall specify the nature of any food processing activities. An application shall include other information reasonably required by the department, or by the agent city or county, for licensing purposes.

SECTION 8. 97.30 (2) (c) of the statutes is amended to read:

97.30 (2) (c) *Pre-licensing inspection.* The Except as provided under par. (d), the department or an agent city or county may not issue a license for a new retail food establishment until it inspects the new retail food establishment for compliance with this section and rules promulgated under this section. A licensed retail food establishment is not considered a new retail food establishment under this paragraph solely because of a change in ownership, or solely because of alterations in the retail food establishment.

SECTION 9. 97.30 (2) (d) of the statutes is created to read:

97.30 (2) (d) *Initial inspection of micro market.* The department or an agent city or county may issue a license for a new retail food establishment that is a micro market before it inspects the new retail food establishment that is a micro market for compliance with this section and rules promulgated under this section. Before one year after the date that the department or the agent city or county issues a license for a new retail food establishment

that is a micro market, it shall inspect the new retail food establishment for compliance with this section and rules promulgated under this section.

SECTION 10. 97.30 (3) (a) of the statutes is amended to read:

97.30 (3) (a) *License fee.* Am Except as provided under sub. (3s), an applicant for a retail food establishment license shall pay the license fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated license fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The license fee for that year shall be recomputed based on actual gross receipts. If the license fee based on actual gross receipts differs from the estimated license fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year’s license fee.

SECTION 11. 97.30 (3) (am) of the statutes is amended to read:

97.30 (3) (am) *Weights and measures inspection fee.* An applicant for a retail food establishment license shall pay the weights and measures inspection fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated weights and measures inspection fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The weights and measures inspection fee for that year shall be recomputed based on actual gross receipts. If the weights and measures inspection fee based on actual gross receipts differs from the estimated weights and measures inspection fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year’s weights and measures inspection fee. This paragraph does not apply to a retail food establishment that is a micro market.

SECTION 12. 97.30 (3) (b) of the statutes is amended to read:

97.30 (3) (b) *Reinspection fee.* If the department reinspects a retail food establishment because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the retail food establishment operator the reinspection fee specified under sub. (3m). A reinspection fee is payable when the reinspection is completed, and is due upon writ-

ten demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator. This paragraph does not apply to a retail food establishment that is a micro market.

SECTION 13. 97.30 (3) (c) of the statutes is amended to read:

97.30 (3) (c) *Surcharge for operating without a license.* An applicant for a retail food establishment license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3m) whichever is less, or if the applicant operates a micro market a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3s) whichever is less, if the department determines that, within one year prior to submitting a license application, the applicant operated the retail food establishment without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the retail food establishment, but does not constitute evidence of a violation of any law.

SECTION 14. 97.30 (3) (d) of the statutes is amended to read:

97.30 (3) (d) *Licensing contingent on payment of fees.* The department may not issue or renew a retail food establishment license unless the license applicant pays all fees which are due and payable under this subsection and sub. (3m) or (3s), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

SECTION 15. 97.30 (3s) of the statutes is created to read:

97.30 (3s) FEES; MICRO MARKETS. An applicant for a retail food establishment license to operate a micro market shall pay one of the following annual license fee amounts:

- (a) For one micro market located in a building, \$40.
- (b) For 2 or more micro markets located in the same building, \$60.

SECTION 16. 97.30 (4) of the statutes is renumbered 97.30 (4) (a) and amended to read:

97.30 (4) (a) Subsection (3) does not apply to any retail food establishment licensed by an agent city or county under s. 97.41. ~~An~~ Except as provided under par. (b), an applicant for a retail food establishment license issued by an agent city or county shall pay fees established by the agent city or county under s. 97.41.

SECTION 17. 97.30 (4) (b) of the statutes is created to read:

97.30 (4) (b) An applicant for a retail food establishment license to be issued by an agent city or county shall pay the fee under sub. (3s) if the application is for a micro market.

SECTION 18. 97.41 (4) (a) of the statutes is amended to read:

97.41 (4) (a) Except as provided in par. (b) or (c), a local health department granted agent status under this section shall establish and collect the license fee for retail food establishments, as defined in s. 97.30 (1) (c). The local health department may establish separate fees for pre-licensing inspections of new establishments, for pre-licensing inspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under sub. (5). A local health department which is granted agent status under this section or under s. 97.615 may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment with respect to which it is granted agent status under this section or under s. 97.615 (2).

SECTION 19. 97.41 (4) (c) of the statutes is created to read:

97.41 (4) (c) A local health department granted agent status under this section shall collect the license fees under s. 97.30 (3s) for retail food establishments, as defined in s. 97.30 (1) (c), that are micro markets.

SECTION 20. 97.41 (5) of the statutes is amended to read:

97.41 (5) The department shall establish state fees for its costs related to setting standards for retail food establishments, as defined in s. 97.30 (1) (c), setting standards for agents under this section and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under sub. (4) (a), collect the state fees, and reimburse the department for the state fees collected. The state fee may not exceed 20 percent of the license fee charged under s. 97.30 (3), or for a retail food establishment that is a micro market, 20 percent of the license fee charged under s. 97.30 (3s), for a license issued by the department.

SECTION 21. Nonstatutory provisions.

(1) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes, the department of agriculture, trade and consumer protection may promulgate rules governing the operation of micro markets under section 97.30 (5) of the statutes for the period before the effective date of the permanent rules promulgated under section 97.30 (5) of the statutes but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required

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to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare

and is not required to provide a finding of emergency for a rule promulgated under this subsection.

