



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2013 LRB-1446/1 (For: Rep. Stone)

has been copied/added to the drafting file for

2013 LRB-3587 (For: Rep. Thiesfeldt)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 11/08/2013 (Per: MED)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2013 DRAFTING REQUEST

Bill

Received: **1/31/2013** Received By: **mduchek**
Wanted: **As time permits** Same as LRB:
For: **Jeff Stone (608) 266-8590** By/Representing: **Marsha Dake**
May Contact: Drafter: **mduchek**
Subject: **Health - miscellaneous** Addl. Drafters:
Extra Copies: **TJD**

Submit via email: **YES**
Requester's email: **Rep.Stone@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wi.gov**

Pre Topic:

No specific pre topic given

Topic:

Food protection changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 3/4/2013			_____			
/P1	mduchek 6/26/2013	jdyer 6/27/2013	jfrantze 6/27/2013	_____	srose 3/20/2013		State
/P2	mduchek 8/12/2013	jdyer 8/15/2013	rschlue 8/15/2013	_____	sbasford 6/27/2013		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	mduchek 8/20/2013	jdye 8/20/2013	rschluet 8/20/2013	_____	lparisi 8/15/2013		State S&L
/1				_____	sbasford 8/20/2013	srose 9/3/2013	State S&L

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by Chris in Rep.
Stone's office
9-3-13

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Handwritten signature and date 8/15/2013

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1/?	mduchek	3/20 jld	3/20 PH	X			

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Wisconsin Restaurant Association

Food Protection Manager Certification Change In Recertification and Required Food Protection Managers On-Premise

The restaurant industry is the largest public sector employer in Wisconsin. Restaurants need to be safe as they can be. WRA has advocated for and supported efforts to improve the knowledge and professionalism of all of the people who work in the restaurant industry. That is why WRA led the charge to require all restaurants to have at least one Certified Food Protection Manager employed at each restaurant (or other food establishments that sell meals) statewide, beginning in January 1995.

The proposed changes outlined below will protect public health and help restaurants and the industry ensure they are serving the safest food possible..

Proposed changes

Recertification Exam Requirement

Statute change (see yellow highlighted copy of statutes)

- repeal 254.71 (6) (b)
removes reference to standards for approval of training courses
- amend 254.71 (3)
strike "recertification training course" and add "examination that is developed by a certification organization which is accredited as meeting the requirements of the Conference for Food Protection's *Standards for Accreditation of Food Protection Manager Certification Programs* and approved by the department" (this is a change in wording from 2009 AB414)
- amend 254.71 (2)
remove the word "written"

Key Reasons to Change Recertification Requirements for Certified Food Protection Managers

- **Protect public health and the integrity of the restaurant industry by ensuring owners, managers and chefs learn new food safety principles**
 - **We cannot “compromise” on public safety measures that protect the public and the restaurant industry**
 - **A University of Minnesota study shows presence of Certified Food Protection Managers helps prevent food borne illness**
- **The current training only option does not provide a true assessment of knowledge – five years is too long to simply sit through instruction with no true demonstration of knowledge. The only way to truly assess knowledge is by taking an exam from an accredited certification organization**
- **Wisconsin is no longer a leader in food safety**
 - **21 out 23 mandated states require the exam for recertification (over 100 local jurisdictions nationwide require the exam for recertification)**
 - **Wisconsin & Minnesota are the only two states that allow seat time only**
 - **We have fallen behind the rest of the country in ensuring food safety knowledge is demonstrated by owners, managers and chefs after five years**
- **The restaurant industry demands consistency from state to state and overwhelmingly supports testing every five years. Individuals who recertify in Wisconsin have no reciprocity in other states because they recertify without an exam from an accredited certification organization**
- **Food safety practices are based on sound scientific principles. New science determines different and updated practices must be learned and demonstrated on a regular basis.**
- **The City of Milwaukee has required recertification by exam for over three years and the city health department feels it has helped restaurants improve food safety practices**
- **Removing the reference to “written” exams will ensure that computer based exams and accommodations for people with language barrier and disabilities will continue to be available and allow flexibility for the restaurant industry to certify as many people as needed for public safety**

Certified Food Protection Manager On-Premise Requirement

Statute change (see blue highlighted copy of statutes)

- Add to 254.71 (1)
Whenever food is being processed, prepared or served at a restaurant, the person who is licensed to operate the food service operation shall have a certificate holder on the premises, unless the restaurant operation is exempted from this requirement by meeting the all of the following:
 - (a) The restaurant has no more than five (5) food handlers working
 - (b) The restaurant has not had a priority (critical) violation at two consecutive inspections on or after [effective date]

- Add to 254.61
Definition of food handler
"Food handler" means a person engaged in the preparation, processing or service of food who is not a certificate holder

Key Reasons to Require Certified Food Protection Managers On-Premise

- Restaurants need to be as safe as they can be. Having a certified manager on-premise will ensure restaurant has an adequate number of people who understand advanced food safety practices and make sure those practices are implemented at all times the restaurant serves food.
- A Food and Drug Administration study shows the presence of Certified Food Protection Managers help restaurants practice more sound food safety principles and better comply with the Food Code versus those restaurants where a certified manager is not present
- This new requirement will take the next step in ensuring employees practice sound food safety practices at all times restaurant serves food
- Six (6) states and 35 local jurisdiction require a certified food protection manager on premise while food is prepared and/or served – adopting this requirement would again make Wisconsin a food safety leader
- The City of Milwaukee has required restaurants with five or more food handlers to have a certified manager present for over 10 years and it has been well accepted by the restaurant industry.
- Wisconsin requires an establishment to have at least one licensed bartender on duty whenever alcohol is served, to help ensure patrons are not over-served and help prevent drunk driving. It is just as important to have a Certified Food Protection Manager present to help ensure food is as safe as possible.

building code or of an order or regulation of the local board of health or any other person or class of persons whose health, safety or property interests are or would be adversely affected by property that is in violation of the municipal building code or of an order or regulation of the local board of health may file a petition with the clerk of the city, village, or town requesting the governing body to commence an action to declare the property a nuisance or human health hazard. If the governing body refuses or fails to commence an action within 20 days after the filing of the petition, a tenant, class of tenants, other person or other class of persons may commence the action directly upon the filing of security for court costs. The court before which the action of the case is commenced shall exercise jurisdiction in rem or quasi in rem over the property and the owner of record of the property, if known, and all other persons of record holding or claiming any interest in the property shall be made parties defendant and service of process may be had upon them as provided by law. Any change of ownership after the commencement of the action shall not affect the jurisdiction of the court over the property. At the time that the action is commenced, the municipality or other parties plaintiff shall file a lis pendens. If the court finds that a violation exists, it shall adjudge the property a nuisance or human health hazard and the entry of judgment shall be a lien upon the premises.

(2) A property owner or any person of record holding or claiming any interest in the property shall have 60 days after entry of judgment to eliminate the violation. If, within 60 days after entry of judgment under sub. (1), an owner of the property presents evidence satisfactory to the court, upon hearing, that the violation has been eliminated, the court shall set aside the judgment. It may not be a defense to this action that the owner of record of the property is a different person, partnership or corporate entity than the owner of record of the property on the date that the action was commenced or thereafter if a lis pendens has been filed prior to the change of ownership. No hearing under this subsection may be held until notice has been given to the municipality and all the plaintiffs advising them of their right to appear. If the judgment is not so set aside within 60 days after entry of judgment, the court shall appoint a disinterested person to act as receiver of the property for the purpose of abating the nuisance or human health hazard.

(3) (a) Any receiver appointed under sub. (2) shall collect all rents and profits accruing from the property, pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages on the property, and make any repairs necessary to meet the standards required by the building code or the order or regulation of the local board of health. The receiver may, with the approval of the circuit court, borrow money against and encumber the property as security for the money, in the amounts necessary to meet the standards.

(b) At the request of and with the approval of the owner, the receiver may sell the property at a price equal to at least the appraisal value plus the cost of any repairs made under this section for which the selling owner is or will become liable. The receiver shall apply moneys received from the sale of the property to pay all debts due on the property in the order set by law, and shall pay over any balance with the approval of the court, to the selling owner.

(4) The receiver appointed under this section shall have a lien, for the expenses necessarily incurred to abate the nuisance or in the execution of the order, upon the premises upon or in respect of which the work required by the order has been done or expenses incurred. The municipality that sought the order declaring the property to be a nuisance or human health hazard may also recover its expenses and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the expenses are not reimbursed under s. 632.103 (2) from funds withheld from an insurance settlement, by maintaining an action against the property owner under s. 74.53.

(5) The court shall set the fees and bond of the receiver, and may discharge the receiver when the court deems appropriate.

(6) Nothing in this section relieves the owner of any property for which a receiver has been appointed from any civil or criminal responsibility or liability otherwise imposed by law, except that the receiver shall be civilly and criminally responsible and liable for all matters and acts directly under his or her authority or performed by him or her or at his or her direction.

(7) This section shall not apply to owner-occupied one or 2-family dwellings.

(8) The commencement of an action by a tenant under this section is not just cause for eviction.

History: 1973 c. 306; Sup. Ct. Order, 67 Wis. 2d 585, 762 (1975); Stats. 1975 s. 823.22; 1983 a. 476; 1987 a. 378; 1989 a. 347; 1993 a. 27 s. 493; Stats. 1993 s. 254.593; 2001 a. 86.

In an action alleging a public nuisance, it was sufficient to allege that the defendants knowingly caused the lowering of the ground water table from which the area residents drew water from private wells, which caused numerous citizens great hardship. *State v. Michels Pipeline Construction, Inc.* 63 Wis. 2d 278, 217 N.W.2d 339, 219 N.W.2d 308 (1974).

SUBCHAPTER VII

LODGING AND FOOD PROTECTION

254.61. Definitions. In this subchapter:

(1) "Bed and breakfast establishment" means any place of lodging that:

(a) Provides 8 or fewer rooms for rent to no more than a total of 20 tourists or transients;

(b) Provides no meals other than breakfast and provides the breakfast only to renters of the place;

(c) Is the owner's personal residence;

(d) Is occupied by the owner at the time of rental;

(e) Was originally built and occupied as a single-family residence, or, prior to use as a place of lodging, was converted to use and occupied as a single-family residence; and

(f) Has had completed, before May 11, 1990, any structural additions to the dimensions of the original structure, including by renovation, except that this limit does not apply to any of the following:

1. A structural addition, including a renovation, made to a structure after May 11, 1990, within the dimensions of the original structure.

2. A structural addition, made to a structure that was originally constructed at least 50 years before an initial or renewal application for a permit under s. 254.64 (1) (b) is made and for which no use other than as a bed and breakfast establishment is proposed. The structural addition under this subdivision shall comply with the rules under s. 101.63 (1).

(2) "Establishment" means a hotel, tourist rooming house, bed and breakfast establishment, restaurant, temporary restaurant or vending machine commissary.

(3) "Hotel" means all places wherein sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith. "Hotelkeeper", "motelkeeper" and "innkeeper" are synonymous and "inn", "motel" and "hotel" are synonymous.

(3m) "Potluck event" means an event to which all of the following apply:

(a) Attendees of the event provide food and beverages to be shared with other attendees and consumed at the event.

(b) No compensation is provided to any person who conducts or assists in providing the event or who provides food and beverages to be shared at the event, and no compensation is paid by any person for consumption of food or beverages at the event.

(c) The event is sponsored by any of the following:

1. A church.

2. A religious, fraternal, youth, or patriotic organization or service club.

3. A civic organization.

department may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate permits. No fee may exceed the local health department's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under par. (c). A local health department granted agent status under this subsection or under s. 97.41 may issue a single permit and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment for which it is granted agent status under this subsection or under s. 97.41.

(dm) A local health department granted agent status under this subsection may contract with the department of health services for the department of health services to collect fees and issue permits. The department shall collect from the local health department the actual and reasonable cost of providing the services.

(e) The department shall establish state fees for its costs related to setting standards under this subchapter and s. 254.47 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 permit fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the permit fees charged under ss. 254.47 and 254.68.

(f) If, under this subsection, a local health department becomes an agent or its agent status is discontinued during a permittee's permit year, the department of health services and the local health department shall divide any permit fee paid by the permittee for that permit year according to the proportions of the permit year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the permit year due to the change in agent status.

(g) A village, city or county may adopt ordinances and a local board of health may adopt regulations regarding the permittees and premises for which the local health department is the designated agent under this subsection, which are stricter than this subchapter, s. 254.47 or rules promulgated by the department of health services under this subchapter or s. 254.47. No such provision may conflict with this subchapter or with department rules.

(h) This subsection does not limit the authority of the department to inspect establishments in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

(i) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

1. A permit fee established by a local health department granted agent status exceeds the reasonable costs described under par. (d).

2. The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

History: 1983 a. 203 ss. 15, 21; 1985 a. 29; 1985 s. 332 s. 251 (1); 1987 a. 27 ss. 1074m to 1076m, 3200 (24); 1987 a. 307; 1989 a. 31; 1991 a. 39, 315; 1993 a. 16; 1993 a. 27 s. 72; Stats. 1993 a. 254.69; 1993 a. 183; 1995 a. 27 s. 9126 (19); 2001 a. 16; 2007 a. 20 s. 9121 (6) (a).

Cross-reference: See also ch. DHS 192, Wis. adm. code.

254.70 Application. (1) An applicant for a permit under this subchapter shall complete the application prepared by the department or the local health department granted agent status under s. 254.69 (2) and provide, in writing, any additional information the

department of health services or local health department issuing the permit requires.

(2) Upon receipt of an application for a vending machine operator permit, the department may cause an investigation to be made of the applicant's commissary, servicing and transport facilities, if any, and representative machines and machine locations. The operator shall maintain at his or her place of business within this state a list of all vending machines operated by him or her and their location. This information shall be kept current and shall be made available to the department upon request. The operator shall notify the department of any change in operations involving new types of vending machines or conversion of existing machines to dispense products other than those for which such machine was originally designed and constructed.

History: 1975 s. 413 s. 13; Stats. 1975 a. 90.54; 1983 a. 163, 203, 338; 1987 a. 27 s. 3200 (24) (am); 1993 a. 27 s. 73; Stats. 1993 a. 254.70; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

254.71 Certificate of food protection practices.

(1) After January 1, 1995, no person may conduct, maintain, manage or operate a restaurant unless the operator or manager of the restaurant holds a current, valid certificate of food protection practices issued by the department.

(2) Except as provided in s. 250.041, the department may issue a certificate of food protection practices to an individual who satisfactorily completes a written examination, approved by the department, that demonstrates the individual's basic knowledge of food protection practices or who has achieved comparable compliance.

(3) Each certificate is valid for 5 years from the date of issuance and, except as provided in s. 250.041, may be renewed by the holder of the certificate if he or she satisfactorily completes a recertification training course approved by the department.

(5) The department shall conduct evaluations of the effect that the food protection practices certification program has on compliance by restaurants with requirements established under s. 254.74 (1).

(6) The department shall promulgate rules concerning all of the following:

- (a) Establishing a fee for certification and recertification of food protection practices.

- (b) Specifying standards for approval of training courses for recertification of food protection practices.

- (c) Establishing procedures for issuance, except as provided in s. 250.041, of certificates of food protection practices, including application submittal and review.

History: 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 a. 254.71; 1997 a. 27, 191.

Cross-reference: See also ch. DHS 196, Wis. adm. code.

254.715 Restaurants serving fish. (1) A restaurant or temporary restaurant may serve fish taken from the wild to the individual who caught the fish, or to his or her guests, without obtaining a permit under s. 29.541 (1) (b) if all of the following conditions are satisfied:

- (a) The fish are legally taken.
- (b) While the fish are at the restaurant and before the fish are prepared for eating, they are stored in a cooler, which may be a portable cooler, that does not contain any other food.

- (c) The area where the fish are prepared for eating is washed and sanitized before and after preparation of the fish.

- (d) All items used to prepare and serve the fish are washed in a dishwasher after such use.

(2) A restaurant or temporary restaurant may make a pecuniary profit from preparing and serving fish as provided under sub. (1).

History: 2007 a. 20

254.72 Health and safety; standard. Every hotel, tourist rooming house, bed and breakfast establishment, restaurant, tem-

75-25. State Food Protection Practices Certificate Required for Food Service Operations. 1. DEFINITIONS. In this section:

- a. "Certificate holder" means a person who holds a valid, current certificate of food protection practices issued by the Wisconsin department of health and social services under s. 254.71, Wis. Stats.
- b. "Food handler" means a person engaged in the preparation, processing or service of food.
- c. "Food protection practices certificate" means a current, valid certificate of food protection practices issued by the Wisconsin department of health and social services under s. 254.71, Wis. Stats.
- d. "Food service operation" means a regular restaurant, as that term is defined under ch. HFS 196, Wis. Adm. Code, or a retail food establishment, as that term is defined under s. 97.30, Wis. Stats., except that the term does not include a retail food establishment that processes non-potentially hazardous food or sells prepackaged potentially hazardous food obtained from an approved source.
- e. "Potentially hazardous food" has the meaning given to that term under ch. ATCP 75, appendix, and ch. HFS 196, appendix, of the Wis. Adm. Code.
- f. "Ready-to-eat food" means restaurant-style food that is offered or prepared for sale and is ready for consumption, regardless of whether consumption is on the premises where the food is sold.
- g. "Serious food-handling sanitation violation" means a violation that is the basis of a citation by the department and that involves a potentially hazardous food temperature violation,

a food or equipment cross-contamination violation, a poor hygienic practice by a food handler violation or a confirmed case of food-borne illness.

2. CERTIFICATE HOLDER REQUIREMENT.

- a. Each person who is licensed to operate a food service operation shall employ, or shall personally be, a person who is a certificate holder.
 - b. Whenever potentially hazardous food is being processed at a retail food establishment or being prepared or served at a regular restaurant, the person who is licensed to operate the food service operation shall have a certificate holder on the premises, unless the food service operation is exempted from this requirement under sub. 3.
 - c. Whenever a certificate holder is complying with the certificate holder requirement of this subsection, the certificate holder shall have in his or her possession a photo identification that verifies his or her identity.
 - d. The food protection practices certificate of a certificate holder shall be either posted on the premises of the food service operation or readily accessible to the commissioner upon request.
- 2.5. RECERTIFICATION.** As provided in s. 254.71, Wis. Stats., each certificate issued by the Wisconsin department of health services upon a satisfactory completion of a written examination, approved by the department, shall be valid for 5 years from the date of issuance and, except as provided in s. 250.041, Wis. Stats., may be renewed by the certificate holder if he or she satisfactorily passes a Conference for Food Protection - accredited examination.

3. EXEMPTIONS. a. The requirement of sub. 2-b does not apply to a food service operation whenever the food service operation meets all of the following conditions:

a-1. The food service operation has no

more than 5 food handlers working.

a-2. The food service operation has not had a serious food-handling sanitation violation at 2 consecutive inspections on or after January 1, 1996.

a-3. The food service operation has at least one operator or manager who is a certificate holder.

b. The requirement of sub. 2-b does not require a food service operation that includes one or more push carts to have a certificate holder at each push cart, if the food service operation:

b-1. Has an owner, operator or manager who is a certificate holder who is held accountable for training each cart operator in food sanitation practices before operating a cart and who routinely monitors each cart during all periods of food service.

b-2. Consists of one or more push carts that operate only during the summer season.

b-3. Limits food preparation to hot dogs or similar precooked heated food items.

c. These exemptions do not apply to any certificate holder requirement set forth by s. 254.71, Wis. Stats., or by any regulation implementing the terms of that statute.

4. TEMPORARY WAIVERS.

a. Whenever the commissioner finds that a food service operation does not meet the certificate holder requirements of subs. 2-a, 2-b or 3-a-3, the commissioner may:

a-1. Temporarily waive those requirements for up to a maximum of 6 months if the commissioner finds that a person is not a certificate holder because of the person's difficulty with the English language or other disability as determined by the commissioner.

a-2. Temporarily waive those requirements for up to a maximum of 6 months if the commissioner finds that a food service operation does not have a certificate holder because the food service operation has been sold or because a certificate holder has ceased employment with that food service operation.

a-3. Temporarily waive those requirements on a case-by-case basis when the commissioner determines that the violations were due to sickness, emergency or other good cause.

b. The commissioner may not waive a certificate holder requirement included within the terms of subs. 2-a, 2-b or 3-a-3 that is also required either under s. 254.71, Wis. Stats., or under any regulation implementing that statute.

5. PENALTIES. a. Any person that violates or fails to comply with this section shall be subject to a penalty under s. 61-15.

b. Non-compliance with this section may be cause for the commissioner or the department to not renew a license or permit, deny a license or permit, suspend a license or permit or revoke a license or permit. The commissioner or department may take such action concerning a license or permit regardless of whether a penalty for non-compliance has been imposed under par. a



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2413/2
RLR:kjf:md

2009 ASSEMBLY BILL 414

September 4, 2009 - Introduced by Representatives RICHARDS, PETROWSKI, BERNARD SCHABER and TOWNSEND, cosponsored by Senators RISSER, HOPPER and TAYLOR. Referred to Committee on Public Health.

1 AN ACT *to repeal* 254.71 (6) (b); and *to amend* 254.71 (3) of the statutes;
2 relating to: requirements for a certificate of food protection practices and
3 providing an exemption from emergency rule procedures.

Analysis by the Legislative Reference Bureau

Under current law, a person must have a certificate of food protection practices to manage or operate a restaurant. A person must pass a written examination that is approved by the Department of Health Services (DHS), or achieve comparable compliance, to obtain a certificate. A certificate is valid for five years and may be renewed upon satisfactory completion of a recertification training course that is approved by DHS.

This bill requires that a person pass a written examination on food protection practices that is approved by DHS to renew a certificate of food protection practices. The bill also authorizes DHS to promulgate an emergency rule establishing criteria for approving an examination for certificate renewal without providing evidence that an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and without making a finding of emergency.

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

4 SECTION 1. 254.71 (3) of the statutes is amended to read:



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1446/P1

MED:.....

In 3-4-13

jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

purv

4

Gen

1 **AN ACT** relating to: requirements for a certificate of food protection practices. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft. ✓

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

2 SECTION 1. 254.71 (1) of the statutes is renumbered 254.71 (1r) (a). ✓

3 SECTION 2. 254.71 (1g) of the statutes is created to read: ✓

4 254.71 (1g) In this section: ✓

5 (a) "Certificate holder" means an individual who holds a valid certificate of food
6 protection practices issued under this section. ✓

7 (b) "Food handler" means an individual who is engaged in the preparation,
8 processing, or service of food at a restaurant and who is not a certificate holder. ✓

****NOTE: Do you want to define "food" or specify if "food" includes, for instance, drinks or water or if this includes someone who cleans up food after customers who have left? For one definition of "food," which is used in the tax law, see s. 77.51 (3t), stats.

1 **SECTION 3.** 254.71 (1r) (b) and (c) of the statutes are created to read:

2 254.71 (1r) (b) Except as provided in par. (c), whenever food is being prepared,
3 processed, or served at a restaurant, the person who holds the permit for the
4 restaurant shall ensure that a certificate holder is present on the premises of the
5 restaurant.

****NOTE: The term "food service operation" is not used in this part of the statutes. Since I assume you were simply referring to the restaurant for purposes of this bill, I changed it to that. Is that correct?

6 (c) Paragraph (b) does not apply to a restaurant if the restaurant satisfies all
7 of the following:

8 1. The restaurant has 5 or fewer food handlers who are working in the
9 restaurant at that time.

****NOTE: Here, I assume you meant to refer to the number of food handlers working at the restaurant at the time, and not the total number of food handlers who are employed at the restaurant generally. Is this correct?

10 2. The restaurant has not had a priority violation, as determined by the
11 department, at 2 consecutive inspections on or after the effective date of this
12 subdivision [LRB inserts date].

****NOTE: Please review this language. Is it your intent that once a restaurant has had priority violations at two consecutive inspections, it may never again qualify for this exemption? Or are you simply saying that this provision should only apply if the restaurant has had two or more consecutive violations? Also, I can include an initial applicability provision in the bill which should eliminate the need to reference a date in the statutes.

I also modified the above language because the statutes in this chapter do not reference priority or critical violations. So, I assume that DHS determines what constitutes a priority or critical violation. Is this OK? If so, should this also refer to a local health department granted agent status under s. 254.69, stats.?

13 **SECTION 4.** 254.71 (2) of the statutes is amended to read:

14 254.71 (2) Except as provided in s. 250.041, the department may issue a
15 certificate of food protection practices to an individual who satisfactorily completes

1 ~~a written~~ [✓] an examination, approved by the department, that demonstrates the
2 individual's basic knowledge of food protection practices or who has achieved
3 comparable compliance.

History: 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 s. 254.71; 1997 a. 27, 191; 2011 a. 120, 209.

****NOTE: Is the examination in this subsection intended to be the same one as will
be used in sub. (3)?[✓] If so, let me know if I can make this more clear.

4 SECTION 5. 254.71 (3)[✓] of the statutes is renumbered 254.71 (3) (intro.) and
5 amended to read:

6 254.71 (3) (intro.)[✓] Each certificate is valid for 5 years from the date of issuance
7 and, except as provided in s. 250.041, may be renewed by the ~~holder of the certificate~~
8 holder if he or she satisfactorily completes ~~a recertification training course~~ an
9 examination that satisfies all of the following:[✓]

10 (b)[✓] The examination is approved by the department.[✓]

11 SECTION 6. 254.71 (3) (a)[✓] of the statutes is created to read:

12 254.71 (3) (a) The examination is developed by a certification organization that
13 is accredited as meeting the requirements of the Conference for Food Protection's
14 Standards for Accreditation of Food Protection Manager Certification Programs.[✓]

History: 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 s. 254.71; 1997 a. 27, 191; 2011 a. 120, 209.

15 SECTION 7. 254.71 (6) (b) of the statutes is repealed.

16 SECTION 8. Effective date.

17 (1) This act takes effect on first day of the [✓]7th month beginning after
18 publication.

****NOTE: I used a delayed effective date like the one that was included in 2009 AB₄₁₄ [⊖]

19 (END)

TD-note →

*

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1446/P1dn

MED: r:...

Date

jkd

Please review the embedded notes in this draft[✓] and let me know if you would like any further changes.

Also, under this draft, in order to renew a certificate of food protection practices, a person must pass an examination that is developed by a certification organization that is accredited as meeting the requirements of the[✓] Conference for Food Protection's *Standards for Accreditation of Food Protection Manager Certification Programs*. One could argue that, by enacting this provision, the legislature would be unconstitutionally delegating its law-making[✓] function to a private entity to determine the requirements for licensure renewal, especially since those requirements may presumably change over time without further legislative approval.[✓] However, because the delegation relates only to the use of an examination, and not to legal standards, it may not be viewed as problematic.[✓] Nevertheless, in light of this potential issue and the possibility that this entity may one day cease to exist, you may wish to consider making the use of such an examination by DHS optional, or consider instead referencing the current edition of the standards. I just wanted to note this potential issue. Thank you.[✓]

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1446/P1dn
MED:jld:ph

March 20, 2013

Please review the embedded notes in this draft and let me know if you would like any further changes.

Also, under this draft, in order to renew a certificate of food protection practices, a person must pass an examination that is developed by a certification organization that is accredited as meeting the requirements of the Conference for Food Protection's *Standards for Accreditation of Food Protection Manager Certification Programs*. One could argue that, by enacting this provision, the legislature would be unconstitutionally delegating its law-making function to a private entity to determine the requirements for licensure renewal, especially since those requirements may presumably change over time without further legislative approval. However, because the delegation relates only to the use of an examination, and not to legal standards, it may not be viewed as problematic. Nevertheless, in light of this potential issue and the possibility that this entity may one day cease to exist, you may wish to consider making the use of such an examination by DHS optional, or consider instead referencing the current edition of the standards. I just wanted to note this potential issue. Thank you.

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1446/P1
MED:jld:ph

PRELIMINARY DRAFT - NOT READY

Final
Draft
Drafting chgs.

1 AN ACT *to repeal* 254.71 (6) (b); *to renumber* 254.71 (1); *to renumber and*
2 *amend* 254.71 (3); *to amend* 254.71 (2); and *to create* 254.71 (1g), 254.71 (1r)
3 (b) and (c) and 254.71 (3) (a) of the statutes; **relating to:** requirements for a
4 certificate of food protection practices.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

5 SECTION 1. 254.71 (1) of the statutes is renumbered 254.71 (1r) (a).

6 SECTION 2. 254.71 (1g) of the statutes is created to read:

7 254.71 (1g) In this section:

8 (a) "Certificate holder" means an individual who holds a valid certificate of food
9 protection practices issued under this section.

1 (b) "Food handler" means an individual who is engaged in the preparation,
2 processing, or service of food at a restaurant and who is not a certificate holder.

****NOTE: Do you want to define "food" or specify if "food" includes, for instance, drinks or water or if this includes someone who cleans up food after customers who have left? For one definition of "food," which is used in the tax law, see s. 77.51 (3t), stats.

3 SECTION 3. 254.71 (1r) (b) and (c) of the statutes are created to read:

4 254.71 (1r) (b) Except as provided in par. (c), whenever food is being prepared,
5 processed, or served at a restaurant, the person who holds the permit for the
6 restaurant shall ensure that a certificate holder is present on the premises of the
7 restaurant.

****NOTE: The term "food service operation" is not used in this part of the statutes. Since I assume you were simply referring to the restaurant for purposes of this bill, I changed it to that. Is that correct?

8 (c) Paragraph (b) does not apply to a restaurant if the restaurant satisfies all
9 of the following:

10 1. The restaurant has 5 or fewer food handlers who are working in the
11 restaurant at that time.

****NOTE: Here, I assume you meant to refer to the number of food handlers working at the restaurant at the time, and not the total number of food handlers who are employed at the restaurant generally. Is this correct?

12 2. The restaurant has not had a priority violation, as determined by the
13 department, at 2 consecutive inspections on or after the effective date of this
14 subdivision [LRB inserts date].

****NOTE: Please review this language. Is it your intent that once a restaurant has had priority violations at two consecutive inspections, it may never again qualify for this exemption? Or are you simply saying that this provision should only apply if the restaurant has had two or more consecutive violations? Also, I can include a conditional applicability provision in the bill which should eliminate the need to reference a date in the statutes.

I also modified the above language because the statutes in this chapter do not reference priority or critical violations. So, I assume that DHS determines what constitutes a priority or critical violation. Is this OK? If so, should this also refer to local health department granted agent status under s. 254.69, stats.?

15 SECTION 4. 254.71 (2) of the statutes is amended to read:

Summary of Comments on 13-14446_P1 Recert & On-premise draft with WRA comments.pdf

Page: 2

-
- ☐ Number: 1 Author: squam Subject: Sticky Note Date: 3/25/2013 2:39:29 PM
If a reference is needed we would prefer it refer to DHS 196 Appendix A Wisconsin Food Code. It defines "food" as: "Food" means a raw, cooked, or processed edible substance, ice, BEVERAGE, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

 - * ☐ Number: 2 Author: squam Subject: Sticky Note Date: 3/25/2013 2:40:16 PM
Restaurant is correct

 - ☐ Number: 3 Author: squam Subject: Sticky Note Date: 3/25/2013 2:40:57 PM
Yes, it refers to working at the restaurant at any given time

 - ☐ Number: 4 Author: squam Subject: Sticky Note Date: 3/25/2013 2:44:29 PM
The intent is to for the restaurant to be required to have a CFPM on duty at all times if they have 2 or more priority violations in consecutive inspections after the statute goes into effect. This provides incentive for the smaller operator to practice proper active managerial control over the food safety activities in their establishment, when the CFPM is not present.

 - ☐ Number: 5 Author: squam Subject: Sticky Note Date: 3/25/2013 2:45:20 PM
DHS does determine what a priority violation is via DHS 196 Appendix A Wisconsin Food Code

1 254.71 (2) Except as provided in s. 250.041, the department may issue a
2 certificate of food protection practices to an individual who satisfactorily completes
3 ~~a written~~ an examination, approved by the department, that demonstrates the
4 individual's basic knowledge of food protection practices or who has achieved
5 comparable compliance.

 ***NOTE: Is the examination in this subsection intended to be  same one as will
be used in sub. (3)? If so, let me know if I can make this more clear.

6 **SECTION 5.** 254.71 (3) of the statutes is renumbered 254.71 (3) (intro.) and
7 amended to read:

8 254.71 (3) (intro.) Each certificate is valid for 5 years from the date of issuance
9 and, except as provided in s. 250.041, may be renewed by the ~~holder of the certificate~~
10 holder if he or she satisfactorily completes ~~a recertification training course~~ an
11 examination that satisfies all of the following:

12 (b) The examination is approved  by the department.

13 **SECTION 6.** 254.71 (3) (a) of the statutes is created to read:

14 254.71 (3) (a) The examination is developed by a certification organization that
15 is accredited as meeting the requirements of the Conference for Food Protection's
16 Standards for Accreditation of Food Protection Manager Certification Programs. 

17 **SECTION 7.** 254.71 (6) (b) of the statutes is repealed.

18 **SECTION 8. Effective date.**

19 (1) This act takes effect on first day of the 7th month beginning after
20 publication.

 ***NOTE: I used a delayed effective date like the  that was included in 2009
AB-414.

Number: 1 Author: squam Subject: Sticky Note Date: 3/25/2013 2:46:13 PM

Yes this is referring to the same exams

Number: 2 Author: squam Subject: Sticky Note Date: 3/25/2013 2:48:52 PM

We strongly suggest the wording in (b) "The examination is" be changed to "The examinations are"

Same with 254.71 (3)(a) "The examination is) be changed to "Examinations are"

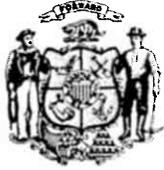
Number: 3 Author: squam Subject: Sticky Note Date: 3/25/2013 2:52:17 PM

It is OK to remove the reference to the Conference for Food Protection's Standards for Accreditation of Food Protection Manager Certification Programs.

It can be replaced with as meeting requirements approved by the department (DHS)

Number: 4 Author: squam Subject: Sticky Note Date: 3/25/2013 2:53:07 PM

We may want this date to be more definite, such as July 1, 2014 or ~~January 1, 2015~~



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1446/P1
MED:jld:ph

P2

In 6-26-13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

✓

ROSEN

1 AN ACT to repeal 254.71 (6) (b); to renumber 254.71 (1); to renumber and
2 amend 254.71 (3); to amend 254.71 (2); and to create 254.71 (1g), 254.71 (1r)
3 (b) and (c) and 254.71 (3) (a) of the statutes; relating to: requirements for a
4 certificate of food protection practices. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

5 SECTION 1. 254.71 (1) of the statutes is renumbered 254.71 (1r) (a).

6 SECTION 2. 254.71 (1g) of the statutes is created to read:

7 254.71 (1g) In this section:

8 (a) "Certificate holder" means an individual who holds a valid certificate of food
9 protection practices issued under this section.

Handwritten notes: A box labeled 'INS 1-7' with a checkmark and an arrow pointing to line 8. Another box labeled 'INS 1-9' with a checkmark and an arrow pointing to line 9.

1

e(d)
H (b)

"Food handler" means an individual who is engaged in the preparation, processing, or service of food at a restaurant and who is not a certificate holder.

2

***NOTE: Do you want to define "food" or specify if "food" includes, for instance, drinks or water or if this includes someone who cleans up food after customers who have left? For one definition of "food," which is used in the tax law, see s. 77.51 (3t), stats.

3

SECTION 3. 254.71 (1r) (b) and (c) of the statutes are created to read:

4

254.71 (1r) (b) Except as provided in par. (c), whenever food is being prepared,

5

processed, or served at a restaurant, the person who holds the permit for the

6

restaurant shall ensure that a certificate holder is present on the premises of the

7

restaurant.

***NOTE: The term "food service operation" is not used in this part of the statutes. Since I assume you were simply referring to the restaurant for purposes of this bill, I changed it to that. Is that correct?

8

(c) Paragraph (b) does not apply to a restaurant if the restaurant satisfies all

9

of the following:

10

1. The restaurant has 5 or fewer food handlers who are working in the

11

restaurant at that time.

***NOTE: Here, I assume you meant to refer to the number of food handlers working at the restaurant at the time, and not the total number of food handlers who are employed at the restaurant generally. Is this correct?

12

2. The restaurant has not had a priority violation, as determined by the

13

department, at 2 consecutive inspections on or after the effective date of this

14

subdivision [LRB inserts date]

***NOTE: Please review this language. Is it your intent that once a restaurant has had priority violations at two consecutive inspections, it may never again qualify for this exemption? Or are you simply saying that this provision should only apply if the restaurant has had two or more consecutive violations? Also, I can include an initial applicability provision in the bill which should eliminate the need to reference a date in the statutes.

I also modified the above language because the statutes in this chapter do not reference priority or critical violations. So, I assume that DHS determines what constitutes a priority or critical violation. Is this OK? If so, should this also refer to a local health department granted agent status under s. 254.69, stats.?

ins 2-14

15

SECTION 4. 254.71 (2) of the statutes is amended to read:

1 254.71 (2) Except as provided in s. 250.041, the department may issue a
 2 certificate of food protection practices to an individual who satisfactorily completes
 3 ~~a written an~~ ^{approved} ~~examination, approved by the department, that demonstrates the~~
 4 ~~individual's basic knowledge of food protection practices or who has achieved~~
 5 comparable compliance.

****NOTE: Is the examination in this subsection intended to be the same one as will be used in sub. (3)? If so, let me know if I can make this more clear.

Fix
Component

6 **SECTION 5.** 254.71 (3) of the statutes is renumbered 254.71 (3) (intro.) and
 7 amended to read:

8 254.71 (3) (intro.) Each certificate is valid for 5 years from the date of issuance
 9 and, except as provided in s. 250.041, may be renewed by the holder of the certificate
 10 holder if he or she satisfactorily completes ~~a recertification training course~~ ^{an}
 11 examination that satisfies all of the following: ^{approved}

12 (b) The examination is ~~approved by the department,~~ ^{approved}
~~approved by the department,~~ ^{approved}

LPS.
MOVE PERIOD UP

13 **SECTION 6.** 254.71 (3) (a) of the statutes is ~~created~~ to read:

14 254.71 (3) (a) The examination is developed by a certification organization that
 15 is accredited as meeting the requirements of the Conference for Food Protection's
 16 Standards for Accreditation of Food Protection Manager Certification Programs.

17 ~~**SECTION 7.** 254.71 (6) (b) of the statutes is repealed.~~ ^{INS 3-17}

18 **SECTION 8. Effective date.**

19 (1) This act takes effect on ~~first day of the 7th month beginning after~~
 20 ~~publication~~ ^{July 1, 2014}

****NOTE: I used a delayed effective date like the one that was included in 2009 AB-414.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P3ins
MED:.....

INSERT 1-7

1 (a) "Approved examination" means an examination that allows an individual
2 to demonstrate basic knowledge of food protection practices and that is approved by
3 the department as meeting the standards established under sub. (6) (b).

****NOTE: Because you indicated that the same type of examination would be used under sub. (2) as is used under sub. (3), I simply created a defined term of "approved examination" to refer to it. Is this OK? Let me know if any further changes are needed to this definition.

(end ins 1-7)

****NOTE: I did not change language from "examination is" to "examinations are" because the result would not be consistent with other uses in the bill of the singular form of "examination" and I am not sure what the intent of this change was. If the intent is to make sure that more than one examination could constitute an approved examination, I think the language already allows for this by saying "an approved examination" instead of "the approved examination" (see also s. 990.001(1), stats., which provides that the singular includes the plural, and the plural includes the singular). However, if your intent with this proposed change is something different, please let me know.

INSERT 1-9

4 (c) "Food" means a raw, cooked, or processed edible substance; ice; beverages;
5 an ingredient used or intended for use or for sale in whole or in part for human
6 consumption; or chewing gum.

****NOTE: This definition of "food" is based upon the one provided, with very slight modifications.

INSERT 2-14

check auto ref please (to Initial App in Ins 3-17)

****NOTE: See SECTION 2 of the bill, which specifies that these changes first apply to inspections conducted on the bill's effective date.

****NOTE: If a restaurant that had a priority violation at two consecutive inspections then has an inspection without a priority violation, should the restaurant again become eligible for this exemption, or would they forever remain ineligible?

****NOTE:

NO
4

INSERT 3-17

7 SECTION 1. 254.71 (6) (b) of the statutes is amended to read:
8 254.71 (6) (b) Specifying standards for approval of training courses for
9 ~~recertification of food protection practices~~ examinations required under this section.



***NOTE: I amended this provision instead of repealing it because you said examinations would have to meet requirements approved by DHS. Is this OK? Note that this provision requires the promulgation of rules. Is that OK? =

SECTION 2. Initial applicability.

1

2

(1) The treatment of section 254.71 (1r) (c) 2. ✓ of the statutes first applies

3

inspections conducted on the effective date of this subsection. ✓

(end ins 3-17)

Duchek, Michael

From: Phillips, Justin
Sent: Monday, August 05, 2013 11:39 AM
To: Duchek, Michael
Subject: RE: LRB 1446

The points look good and yes to renewals after the effective date

--

Justin Phillips

Research Assistant

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Duchek, Michael
Sent: Monday, August 05, 2013 11:37 AM
To: Phillips, Justin
Subject: RE: LRB 1446

Also Justin,

I assume that the provisions related to the examinations and the renewals should first apply to licenses or license renewals issued on the 1-1-15 effective date, but please confirm.

-Mike

From: Duchek, Michael
Sent: Monday, August 05, 2013 11:19 AM
To: Phillips, Justin
Subject: RE: LRB 1446

Justin, just to confirm here is what I am all doing in this version of -1446:

- Local ordinance preemption provision
- Change effective date to 1-1-15
- Add local health departments in response to note at page 2, line 18
- Change exception to provision so that if a restaurant has 2 consecutive inspections with priority violations, they may not claim the exception until they then have 2 more consecutive inspections *without* priority violations (2 in a row to lose exception and 2 in a row to get it back)

Is this everything? Let me know if anything here is not accurate or if I am missing something.

-Mike

From: Phillips, Justin
Sent: Wednesday, July 31, 2013 3:41 PM

To: Duchek, Michael
Subject: RE: LRB 1446

It's not, I was just afraid that I would let it slip through the cracks if I didn't check in

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590

From: Duchek, Michael
Sent: Wednesday, July 31, 2013 3:40 PM
To: Phillips, Justin
Subject: RE: LRB 1446

Hey Justin,

I've had a number of requests lately and haven't had a chance to get those changes made yet, but that is about at the top of my list. I should be able to get it to you within the next week or two, but if it's urgent, please let me know.

-Mike

From: Phillips, Justin
Sent: Wednesday, July 31, 2013 3:13 PM
To: Duchek, Michael
Subject: LRB 1446

Mike-

Wanted to follow up on LRB 1446. I know we talked a while back about making some changes to p2. Hoping to get those changes and an official draft in the near future. Thanks

Justin

--

Justin Phillips

Office of Representative Jeff Stone
82nd Assembly District

(608) 266-8590



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1446/73
MED:jld:jf

In 8-12-13
~~AVEN~~ Due Wednesday

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

8/21

Inserts

4

Regen

1 AN ACT to renumber 254.71 (1); to amend 254.71 (2), 254.71 (3) and 254.71 (6)
2 (b); and to create 254.71 (1g) and 254.71 (1r) (b) and (c) of the statutes;
3 relating to: requirements for a certificate of food protection practices. ✓

and local ordinances related to certificates

Analysis by the Legislative Reference Bureau

Ins Analysis ✓

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.
For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

4

SECTION 1. 254.71 (1) of the statutes is renumbered 254.71 (1r) (a). Ins 1-4 ✓

5 SECTION 2. 254.71 (1g) of the statutes is created to read:

6 254.71 (1g) In this section:

7 (a) "Approved examination" means an examination that allows an individual
8 to demonstrate basic knowledge of food protection practices and that is approved by
9 the department as meeting the standards established under sub. (6) (b).



 ****NOTE: Because you indicated that the same type of examination would be used under sub. (2) as is used under sub. (3), I simply created a defined term of "approved examination" to refer to it. Is this OK? Let me know if any further changes are needed to this definition.

1 (b) "Certificate holder" means an individual who holds a valid certificate of food
2 protection practices issued under this section.

3 (c) "Food" means a raw, cooked, or processed edible substance; ice; beverages;
4 an ingredient used or intended for use or for sale in whole or in part for human
5 consumption; or chewing gum.



 ****NOTE: This definition of "food" is based upon the one provided, with very slight modifications.

6 (d) "Food handler" means an individual who is engaged in the preparation,
7 processing, or service of food at a restaurant and who is not a certificate holder.

8 **SECTION 3.** 254.71 (1r) (b) and (c) of the statutes are created to read:

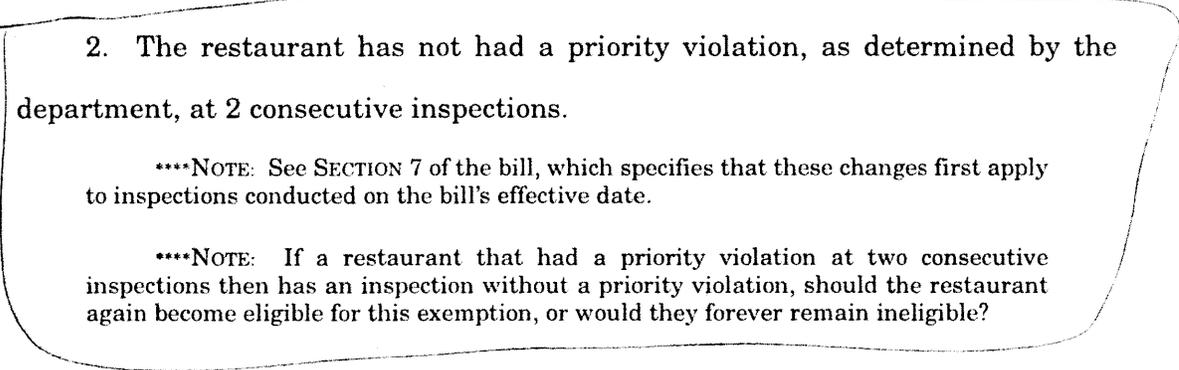
9 254.71 (1r) (b) Except as provided in par. (c), whenever food is being prepared,
10 processed, or served at a restaurant, the person who holds the permit for the
11 restaurant shall ensure that a certificate holder is present on the premises of the
12 restaurant.

13 (c) Paragraph (b) does not apply to a restaurant if the restaurant satisfies all
14 of the following:

15 1. The restaurant has 5 or fewer food handlers who are working in the
16 restaurant at that time.

 [INS 2-17]

17 2. The restaurant has not had a priority violation, as determined by the
18 department, at 2 consecutive inspections.



 ****NOTE: See SECTION 7 of the bill, which specifies that these changes first apply to inspections conducted on the bill's effective date.

****NOTE: If a restaurant that had a priority violation at two consecutive inspections then has an inspection without a priority violation, should the restaurant again become eligible for this exemption, or would they forever remain ineligible?

****NOTE: Should this also refer to a local health department granted agent status under s. 254.69, stats.?

1 SECTION 4. 254.71 (2) of the statutes is amended to read:

2 254.71 (2) Except as provided in s. 250.041, the department may issue a
3 certificate of food protection practices to an individual who satisfactorily completes
4 ~~a written an approved examination, approved by the department, that demonstrates~~
5 ~~the individual's basic knowledge of food protection practices~~ or who has achieved
6 comparable compliance.

7 SECTION 5. 254.71 (3) of the statutes is amended to read:

8 254.71 (3) Each certificate is valid for 5 years from the date of issuance and,
9 except as provided in s. 250.041, may be renewed by the holder of the certificate
10 holder if he or she satisfactorily completes ~~a recertification training course approved~~
11 ~~by the department~~ an approved examination.

12 SECTION 6. 254.71 (6) (b) of the statutes is amended to read:

13 254.71 (6) (b) Specifying standards for approval of ~~training courses for~~
14 ~~recertification of food protection practices~~ examinations required under this section.

****NOTE: I amended this provision instead of repealing it because you said examinations would have to meet requirements approved by DHS. Is this OK? Note that this provision requires the promulgation of rules. Is that OK?

15 SECTION 7. Initial applicability.

16 (1) The treatment of section 254.71 (1r) (c) 2. of the statutes first applies
17 inspections conducted on the effective date of this subsection.

18 SECTION 8. Effective date.

19 (1) This act takes effect on July 1, 2014. ^{January 1, 2015}

20 (END)

Ins 3-17 ✓

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1446/P3ins
MED:.....

INSERT ANALYSIS

Under current law, the Department of Health Services (DHS) may issue a certificate of food protection practices (FPP certificate) to an individual who: 1) satisfactorily completes a written examination approved by DHS that demonstrates the individual's basic knowledge of food protection practices; or 2) who has achieved comparable compliance. Also under current law, an FPP certificate holder may renew the FPP certificate after ^{five} 5 years by satisfactorily completing a recertification training course approved by DHS as meeting standards for approval that are established by DHS by rule.

This bill eliminates the requirement that the initial examination be written and requires examinations to be approved by DHS as meeting standards established by DHS by rule (approved examinations). The bill also provides that an individual renewing an FPP certificate, instead of satisfactorily completing a recertification training course approved by DHS, must again satisfactorily complete an approved examination.

The bill provides, subject to an exception, that whenever food is being prepared, processed, or served at a restaurant, the person who holds the permit for the restaurant issued by DHS or a local health department (restaurant permit holder) must ensure that there is a person on the restaurant premises who holds an FPP certificate. Under the exception, the restaurant permit holder is not required to ensure that there is an FPP certificate holder on the premises if both of the following apply: 1) the restaurant has five or fewer food handlers who are working at the restaurant at that time; and 2) if the restaurant has had a priority violation at each of two consecutive inspections, the restaurant has, subsequent to those inspections, had two consecutive inspections without a priority health violation.

Finally, the bill prohibits a city, village, town, or county (local government) from enacting an ordinance requiring a restaurant, a person who holds a permit for a restaurant, or a person who conducts, maintains, manages, or operates a restaurant to satisfy a requirement related to the issuance or possession of an FPP certificate that is not found under the provisions in the statutes related to FPP certificates. The bill provides that, if a local government has in effect on the bill's effective date an ordinance that is so prohibited, that ordinance does not apply and may not be enforced.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 1-4

- 1 SECTION 1. 66.0436 of the statutes is created to read:
- 2 **66.0436 Certificates of food protection practices for restaurants.** (1)
- 3 In this section, "restaurant" has the meaning given in s. 254.61 (5).



permit holder

*
*

1 (2) No city, village, town, or county[✓] may enact an ordinance requiring a
2 restaurant, a person who holds a permit for a restaurant, or a person who conducts,
3 maintains, manages, or operates a restaurant to satisfy a requirement related to the
4 issuance or possession of a certificate of food protection practices that is not found
5 under s. 254.71.[✓]

 ***NOTE: Please review this provision, which would still allow local governments
to enact ordinances as long as they did not require anything beyond what is found in s.
254.71.[✓] Does this satisfy the intent?

6 (3) If a city, village, town, or county has in effect on[✓] January 1, 2015, an
7 ordinance that the city, village, town, or county is prohibited from enacting under
8 sub. (2),[✓] the ordinance does not apply and may not be enforced.

9 **SECTION 2.** 254.71 (1)^x of the statutes is renumbered 254.71 (1r) (a) and
10 amended to read:

11 254.71 (1r) (a) After January 1, 1995, no person may conduct, maintain,
12 manage or operate a restaurant unless the operator or manager of the restaurant
13 holds a current, valid certificate of food protection practices issued by the department
14 is a certificate holder.[✓]

History: 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 s. 254.71; 1997 a. 27, 191; 2011 a. 120, 209.

 ***NOTE: I made this change just to be consistent with other changes in the bill. [✓]

INSERT 2-17

15 2. If the restaurant has had a priority violation, as determined by the
16 department[✓] or a local health department granted agent status under s.[✓] 254.69, at
17 each of 2 consecutive inspections conducted on or after January 1, 2015, the
18 restaurant has had 2 consecutive inspections subsequent to those inspections
19 without a priority violation, as determined by the department or local health
20 department.[✓]

 ***NOTE: Please review this, which essentially says that, once a restaurant has
priority violations at two consecutive inspections, the exemption may only be claimed



again once the restaurant subsequently has two consecutive priority violation free inspections. Also, I put the date here instead of using an initial applicability provision. Let me know if any changes are needed here.

INSERT 3-17

- 1 (1) The treatment of section 254.71 (2) of the statutes first applies to an
2 application for a certificate of food protection practices that is submitted on the
3 effective date of this subsection.
- 4 (1) The treatment of section 254.71 (3) of the statutes first applies to an
5 application for a renewal of a certificate of food protection practices that is submitted
6 on the effective date of this subsection.

****NOTE: I added these provisions to specify that the changes to the certificate issuance and renewal requirements will first apply beginning with individuals who apply for or who apply to renew a certificate on January 1, 2015. Is that OK?



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1446/1
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TODAY if poss.

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2013 BILL

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Regen

- 1 **AN ACT to renumber and amend** 254.71 (1); **to amend** 254.71 (2), 254.71 (3)
2 and 254.71 (6) (b); and **to create** 66.0436, 254.71 (1g) and 254.71 (1r) (b) and
3 (c) of the statutes; **relating to:** requirements and local ordinances related to
4 certificates of food protection practices.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Health Services (DHS) may issue a certificate of food protection practices (FPP certificate) to an individual who: 1) satisfactorily completes a written examination approved by DHS that demonstrates the individual's basic knowledge of food protection practices; or 2) has achieved comparable compliance. Also under current law, an FPP certificate holder may renew the FPP certificate after five years by satisfactorily completing a recertification training course approved by DHS as meeting standards for approval that are established by DHS by rule.

This bill eliminates the requirement that the initial examination be written and requires examinations to be approved by DHS as meeting standards established by DHS by rule (approved examinations). The bill also provides that an individual renewing an FPP certificate, instead of satisfactorily completing a recertification training course approved by DHS, must again satisfactorily complete an approved examination.

The bill provides, subject to an exception, that whenever food is being prepared, processed, or served at a restaurant, the person who holds the permit for the restaurant issued by DHS or a local health department (restaurant permit holder)

1 **SECTION 2.** 254.71 (1) of the statutes is renumbered 254.71 (1r) (a) and
2 amended to read:

3 254.71 (1r) (a) After January 1, 1995, no person may conduct, maintain,
4 manage or operate a restaurant unless the operator or manager of the restaurant
5 holds a current, valid certificate of food protection practices issued by the department
6 is a certificate holder.

***NOTE: I made this change just to be consistent with other changes in the bill. ✓

7 **SECTION 3.** 254.71 (1g) of the statutes is created to read:

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10 to demonstrate basic knowledge of food protection practices and that is approved by
11 the department as meeting the standards established under sub. (6) (b).

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13 protection practices issued under this section.

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15 an ingredient used or intended for use or for sale in whole or in part for human
16 consumption; or chewing gum.

17 (d) "Food handler" means an individual who is engaged in the preparation,
18 processing, or service of food at a restaurant and who is not a certificate holder.

19 **SECTION 4.** 254.71 (1r) (b) and (c) of the statutes are created to read:

20 254.71 (1r) (b) Except as provided in par. (c), whenever food is being prepared,
21 processed, or served at a restaurant, the person who holds the permit for the
22 restaurant shall ensure that a certificate holder is present on the premises of the
23 restaurant.

1 (c) Paragraph (b) does not apply to a restaurant if the restaurant satisfies all
2 of the following:

3 1. The restaurant has 5 or fewer food handlers who are working in the
4 restaurant at that time.

5 2. If the restaurant has had a priority violation, as determined by the
6 department or a local health department granted agent status under s. 254.69, at
7 each of 2 consecutive inspections conducted on or after January 1, 2015, the
8 restaurant has had 2 consecutive inspections subsequent to those inspections
9 without a priority violation, as determined by the department or local health
10 department.

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Let me know if any changes are needed here. ✓

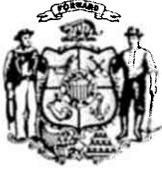
11 SECTION 5. 254.71 (2) of the statutes is amended to read:

12 254.71 (2) Except as provided in s. 250.041, the department may issue a
13 certificate of food protection practices to an individual who satisfactorily completes
14 ~~a written an approved examination, approved by the department, that demonstrates~~
15 ~~the individual's basic knowledge of food protection practices~~ or who has achieved
16 comparable compliance.

17 SECTION 6. 254.71 (3) of the statutes is amended to read:

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22 SECTION 7. 254.71 (6) (b) of the statutes is amended to read:



State of Wisconsin
2013 - 2014 LEGISLATURE



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2013 BILL

1 **AN ACT to renumber and amend** 254.71 (1); **to amend** 254.71 (2), 254.71 (3)
2 and 254.71 (6) (b); and **to create** 66.0436, 254.71 (1g) and 254.71 (1r) (b) and
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BILL

must ensure that there is a person on the restaurant premises who holds an FPP certificate. Under the exception, the restaurant permit holder is not required to ensure that there is an FPP certificate holder on the premises if both of the following apply: 1) the restaurant has five or fewer food handlers who are working at the restaurant at that time; and 2) if the restaurant has had a priority violation at each of two consecutive inspections, the restaurant has, subsequent to those inspections, had two consecutive inspections without a priority health violation.

Finally, the bill prohibits a city, village, town, or county (local government) from enacting an ordinance requiring a restaurant, a restaurant permit holder, or a person who conducts, maintains, manages, or operates a restaurant to satisfy a requirement related to the issuance or possession of an FPP certificate that is not found under the provisions in the statutes related to FPP certificates. The bill provides that, if a local government has in effect on the bill's effective date an ordinance that is so prohibited, that ordinance does not apply and may not be enforced.

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

1 **SECTION 1.** 66.0436 of the statutes is created to read:

2 **66.0436 Certificates of food protection practices for restaurants. (1)**

3 In this section, "restaurant" has the meaning given in s. 254.61 (5).

4 **(2)** No city, village, town, or county may enact an ordinance requiring a
5 restaurant, a person who holds a permit for a restaurant, or a person who conducts,
6 maintains, manages, or operates a restaurant to satisfy a requirement related to the
7 issuance or possession of a certificate of food protection practices that is not found
8 under s. 254.71.

9 **(3)** If a city, village, town, or county has in effect on January 1, 2015, an
10 ordinance that the city, village, town, or county is prohibited from enacting under
11 sub. (2), the ordinance does not apply and may not be enforced.

12 **SECTION 2.** 254.71 (1) of the statutes is renumbered 254.71 (1r) (a) and
13 amended to read:

BILL

1 254.71 (1r) (a) After January 1, 1995, no person may conduct, maintain,
2 manage or operate a restaurant unless the operator or manager of the restaurant
3 holds a current, valid certificate of food protection practices issued by the department
4 is a certificate holder.

5 **SECTION 3.** 254.71 (1g) of the statutes is created to read:

6 254.71 (1g) In this section:

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9 the department as meeting the standards established under sub. (6) (b).

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11 protection practices issued under this section.

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20 restaurant shall ensure that a certificate holder is present on the premises of the
21 restaurant.

22 (c) Paragraph (b) does not apply to a restaurant if the restaurant satisfies all
23 of the following:

24 1. The restaurant has 5 or fewer food handlers who are working in the
25 restaurant at that time.

BILL**SECTION 4**

1 2. If the restaurant has had a priority violation, as determined by the
2 department or a local health department granted agent status under s. 254.69, at
3 each of 2 consecutive inspections conducted on or after January 1, 2015, the
4 restaurant has had 2 consecutive inspections subsequent to those inspections
5 without a priority violation, as determined by the department or local health
6 department.

7 **SECTION 5.** 254.71 (2) of the statutes is amended to read:

8 254.71 (2) Except as provided in s. 250.041, the department may issue a
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10 ~~a written an approved examination, approved by the department, that demonstrates~~
11 ~~the individual's basic knowledge of food protection practices~~ or who has achieved
12 comparable compliance.

13 **SECTION 6.** 254.71 (3) of the statutes is amended to read:

14 254.71 (3) Each certificate is valid for 5 years from the date of issuance and,
15 except as provided in s. 250.041, may be renewed by the ~~holder of the certificate~~
16 ~~holder~~ if he or she satisfactorily completes ~~a recertification training course approved~~
17 ~~by the department~~ an approved examination.

18 **SECTION 7.** 254.71 (6) (b) of the statutes is amended to read:

19 254.71 (6) (b) Specifying standards for approval of ~~training courses for~~
20 ~~recertification of food protection practices~~ examinations required under this section.

21 **SECTION 8. Initial applicability.**

22 (1) The treatment of section 254.71 (2) of the statutes first applies to an
23 application for a certificate of food protection practices that is submitted on the
24 effective date of this subsection.

