

**2013 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-SB434)**

Received: 3/20/2014 Received By: mduchek  
Wanted: As time permits Same as LRB:  
For: Jeremy Thiesfeldt (608) 266-3156 By/Representing: Hariah  
May Contact: Drafter: mduchek  
Subject: Health - miscellaneous Addl. Drafters:  
Extra Copies:

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

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Delete provisions requiring food handler on premises

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**Instructions:**

See attached

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**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<br>3/20/2014 |                       |                       | _____          |                      |                      |                 |
| /1           |                      | wjackson<br>3/20/2014 | jfrantze<br>3/20/2014 | _____          | lparisi<br>3/20/2014 | lparisi<br>3/20/2014 |                 |

FE Sent For:

<END>

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|--------------|----------------|-----------------|---|---|------------------|-----------------|-----------------|
| /?           | mduchek        | 1/1 wlj 3/20    |  |  | 3/20             |                 |                 |
|              |                |                 |   | RS  |                  |                 |                 |

FE Sent For:

<END>



now  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2635/1

MED:jld/rs

50401/1

ASA 1 to

jld/wy

2013 SENATE BILL 434

December 10, 2013 - Introduced by Senators FARROW and L. TAYLOR, cosponsored by Representatives THIESFELDT, BERNIER, BIES, BROOKS, KAHL, A. OTT, PETRYK, RIPP and SENICKI. Referred to Committee on Health and Human Services.

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)

**SENATE BILL 434**

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.

For further information see the *state and local* 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:*

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. *Except as provided in par. (b) 1*

9 (3) *1* 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) <sup>e</sup> and  
13 amended to read:

*1* (b) Paragraph (a) does not apply to an ordinance of a  
1st class city that was in effect on March 20, 2014. <sup>o</sup>

**SENATE BILL 434**

1           254.71 (1r) <sup>e</sup>(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:

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).

10          (b) “Certificate holder” means an individual who holds a valid certificate of food  
11 protection practices issued under this section.

12          (c) “Food” means a raw, cooked, or processed edible substance; ice; beverages;  
13 an ingredient used or intended for use or for sale in whole or in part for human  
14 consumption; or chewing gum.

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

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

18           254.71 (1r) (b) Except as provided in par. (c), whenever food is being prepared,  
19 processed, or served at a restaurant, the person who holds the permit for the  
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.

**SENATE BILL 434****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  
9 certificate of food protection practices to an individual who satisfactorily completes  
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.



**Duchek, Michael**

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**From:** Duchek, Michael  
**Sent:** Thursday, March 20, 2014 12:28 PM  
**To:** Hutkowski, Hariah  
**Subject:** Sub. amendment

Hariah,

You/Kae are correct. It will be ASA1 to SB 434.

After consulting with Eric here who does local govts., I did the substitute amendment to say that the City of Milwaukee's ordinance that was in effect today (3/20/2014) is not preempted. I referenced today's date so that Milwaukee won't be able to change their ordinance between now and 1/1/15 (the bill's effective date). In addition, this will prevent them from changing it in the future, as we discussed. So will be stuck with the ordinance they have now, until the legislature enacts something that says otherwise.

**Mike Duchek**  
**Legislative Attorney**  
**Wisconsin Legislative Reference Bureau**  
**(608) 266-0130**

3/20/14

Rep. Thiesfeldt's office - delete all provisions related to requiring having a food manager on premises. However, City of Milwaukee has this requirement so let them keep their existing ordinance.