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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1755

05/22/2011 Authored by Loon, Zellers, Gunther, Daudt, Sanders and others
The bill was read for the first time and referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to restaurants; providing for the Restaurant Recovery and Jobs Creation
1.3 Act; expanding the sales tax exemption for certain meals and drinks; expanding
1.4 the capital equipment exemption; providing for the application of gratuities in
1.5 calculating the minimum wage; modifying the calculation of unemployment
1.6 taxes; modifying license fees; amending Minnesota Statutes 2010, sections
1.7 157.16; 177.24, subdivisions 1, 2; 268.035, subdivision 24; 297A.68, subdivision
1.8 5, by adding subdivisions.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2010, section 157.16, is amended to read:

1.11 **157.16 LICENSES REQUIRED; FEES.**

1.12 Subdivision 1. **License required annually.** A license is required annually for every
1.13 person, firm, or corporation engaged in the business of conducting a food and beverage
1.14 service establishment, youth camp, hotel, motel, lodging establishment, public pool, or
1.15 resort. Any person wishing to operate a place of business licensed in this section shall
1.16 first make application, pay the required fee specified in this section, and receive approval
1.17 for operation, including plan review approval. Seasonal and temporary food stands and
1.18 special event food stands are not required to submit plans. Nonprofit organizations
1.19 operating a special event food stand with multiple locations at an annual one-day event
1.20 shall be issued only one license. Application shall be made on forms provided by the
1.21 commissioner and shall require the applicant to state the full name and address of the
1.22 owner of the building, structure, or enclosure, the lessee and manager of the food and
1.23 beverage service establishment, hotel, motel, lodging establishment, public pool, or resort;
1.24 the name under which the business is to be conducted; and any other information as may
1.25 be required by the commissioner to complete the application for license.

2.1 Subd. 2. **License renewal.** Initial and renewal licenses for all food and beverage
2.2 service establishments, youth camps, hotels, motels, lodging establishments, public pools,
2.3 and resorts shall be issued on an annual basis. Any person who operates a place of
2.4 business after the expiration date of a license or without having submitted an application
2.5 and paid the fee shall be deemed to have violated the provisions of this chapter and shall
2.6 be subject to enforcement action, as provided in the Health Enforcement Consolidation
2.7 Act, sections 144.989 to 144.993. In addition, a penalty of ~~\$60~~ \$50 shall be added to the
2.8 total of the license fee for any food and beverage service establishment operating without
2.9 a license as a mobile food unit, a seasonal temporary or seasonal permanent food stand, or
2.10 a special event food stand, and a penalty of ~~\$120~~ \$100 shall be added to the total of the
2.11 license fee for all restaurants, food carts, hotels, motels, lodging establishments, youth
2.12 camps, public pools, and resorts operating without a license for a period of up to 30 days.
2.13 A late fee of ~~\$360~~ \$300 shall be added to the license fee for establishments operating more
2.14 than 30 days without a license.

2.15 Subd. 2a. **Food manager certification.** An applicant for certification or certification
2.16 renewal as a food manager must submit to the commissioner a ~~\$35~~ \$28 nonrefundable
2.17 certification fee payable to the Department of Health. The commissioner shall issue a
2.18 duplicate certificate to replace a lost, destroyed, or mutilated certificate if the applicant
2.19 submits a completed application on a form provided by the commissioner for a duplicate
2.20 certificate and pays \$20 to the department for the cost of duplication.

2.21 Subd. 3. **Establishment fees; definitions.** (a) The following fees are required
2.22 for food and beverage service establishments, youth camps, hotels, motels, lodging
2.23 establishments, public pools, and resorts licensed under this chapter. Food and beverage
2.24 service establishments must pay the highest applicable fee under paragraph (d), clause
2.25 (1), (2), (3), or (4), and establishments serving alcohol must pay the highest applicable
2.26 fee under paragraph (d), clause (6) or (7). The license fee for new operators previously
2.27 licensed under this chapter for the same calendar year is one-half of the appropriate annual
2.28 license fee, plus any penalty that may be required. The license fee for operators opening
2.29 on or after October 1 is one-half of the appropriate annual license fee, plus any penalty
2.30 that may be required.

2.31 (b) All food and beverage service establishments, except special event food stands,
2.32 and all hotels, motels, lodging establishments, public pools, and resorts shall pay an
2.33 annual base fee of \$150.

2.34 (c) A special event food stand shall pay a flat fee of ~~\$50~~ \$40 annually. "Special event
2.35 food stand" means a fee category where food is prepared or served in conjunction with

3.1 celebrations, county fairs, or special events from a special event food stand as defined
 3.2 in section 157.15.

3.3 (d) In addition to the base fee in paragraph (b), each food and beverage service
 3.4 establishment, other than a special event food stand and a school concession stand, and
 3.5 each hotel, motel, lodging establishment, public pool, and resort shall pay an additional
 3.6 annual fee for each fee category, additional food service, or required additional inspection
 3.7 specified in this paragraph:

3.8 (1) Limited food menu selection, ~~\$60~~ \$50. "Limited food menu selection" means a
 3.9 fee category that provides one or more of the following:

3.10 (i) prepackaged food that receives heat treatment and is served in the package;

3.11 (ii) frozen pizza that is heated and served;

3.12 (iii) a continental breakfast such as rolls, coffee, juice, milk, and cold cereal;

3.13 (iv) soft drinks, coffee, or nonalcoholic beverages; or

3.14 (v) cleaning for eating, drinking, or cooking utensils, when the only food served
 3.15 is prepared off site.

3.16 (2) Small establishment, including boarding establishments, ~~\$120~~ \$100. "Small
 3.17 establishment" means a fee category that has no salad bar and meets one or more of
 3.18 the following:

3.19 (i) possesses food service equipment that consists of no more than a deep fat fryer, a
 3.20 grill, two hot holding containers, and one or more microwave ovens;

3.21 (ii) serves dipped ice cream or soft serve frozen desserts;

3.22 (iii) serves breakfast in an owner-occupied bed and breakfast establishment;

3.23 (iv) is a boarding establishment; or

3.24 (v) meets the equipment criteria in clause (3), item (i) or (ii), and has a maximum
 3.25 patron seating capacity of not more than 50.

3.26 (3) Medium establishment, ~~\$310~~ \$260. "Medium establishment" means a fee
 3.27 category that meets one or more of the following:

3.28 (i) possesses food service equipment that includes a range, oven, steam table, salad
 3.29 bar, or salad preparation area;

3.30 (ii) possesses food service equipment that includes more than one deep fat fryer,
 3.31 one grill, or two hot holding containers; or

3.32 (iii) is an establishment where food is prepared at one location and served at one or
 3.33 more separate locations.

3.34 Establishments meeting criteria in clause (2), item (v), are not included in this fee
 3.35 category.

3.36 (4) Large establishment, ~~\$540~~ \$460. "Large establishment" means either:

4.1 (i) a fee category that (A) meets the criteria in clause (3), items (i) or (ii), for a
 4.2 medium establishment, (B) seats more than 175 people, and (C) offers the full menu
 4.3 selection an average of five or more days a week during the weeks of operation; or

4.4 (ii) a fee category that (A) meets the criteria in clause (3), item (iii), for a medium
 4.5 establishment, and (B) prepares and serves 500 or more meals per day.

4.6 (5) Other food and beverage service, including food carts, mobile food units,
 4.7 seasonal temporary food stands, and seasonal permanent food stands, ~~\$60~~ \$50.

4.8 (6) Beer or wine table service, ~~\$60~~ \$50. "Beer or wine table service" means a fee
 4.9 category where the only alcoholic beverage service is beer or wine, served to customers
 4.10 seated at tables.

4.11 (7) Alcoholic beverage service, other than beer or wine table service, ~~\$165~~ \$135.

4.12 "Alcohol beverage service, other than beer or wine table service" means a fee
 4.13 category where alcoholic mixed drinks are served or where beer or wine are served from
 4.14 a bar.

4.15 (8) Lodging per sleeping accommodation unit, ~~\$10~~ \$8, including hotels, motels,
 4.16 lodging establishments, and resorts, up to a maximum of ~~\$1,000~~ \$800. "Lodging per
 4.17 sleeping accommodation unit" means a fee category including the number of guest rooms,
 4.18 cottages, or other rental units of a hotel, motel, lodging establishment, or resort; or the
 4.19 number of beds in a dormitory.

4.20 (9) First public pool, ~~\$325~~ \$180; each additional public pool, ~~\$175~~ \$100. "Public
 4.21 pool" means a fee category that has the meaning given in section 144.1222, subdivision 4.

4.22 (10) First spa, ~~\$175~~ \$110; each additional spa, ~~\$100~~ \$50. "Spa pool" means a fee
 4.23 category that has the meaning given in Minnesota Rules, part 4717.0250, subpart 9.

4.24 (11) Private sewer or water, ~~\$60~~ \$50. "Individual private water" means a fee
 4.25 category with a water supply other than a community public water supply as defined in
 4.26 Minnesota Rules, chapter 4720. "Individual private sewer" means a fee category with an
 4.27 individual sewage treatment system which uses subsurface treatment and disposal.

4.28 (12) Additional food service, ~~\$150~~ \$130. "Additional food service" means a location
 4.29 at a food service establishment, other than the primary food preparation and service area,
 4.30 used to prepare or serve food to the public. Additional food service does not apply to
 4.31 school concession stands.

4.32 (13) Additional inspection fee, ~~\$360~~ \$300. "Additional inspection fee" means a
 4.33 fee to conduct the second inspection each year for elementary and secondary education
 4.34 facility school lunch programs when required by the Richard B. Russell National School
 4.35 Lunch Act.

5.1 (e) A fee of \$350 for review of construction plans must accompany the initial license
 5.2 application for restaurants, hotels, motels, lodging establishments, or resorts, ~~seasonal~~
 5.3 ~~food stands, and mobile food units. The fee for this construction plan review is as follows:~~
 5.4 with five or more sleeping units.

5.5 Service Area	Type	Fee
5.6 Food	limited food menu	\$275
5.7	small establishment	\$400
5.8	medium establishment	\$450
5.9	large food establishment	\$500
5.10	additional food service	\$150
5.11 Transient food service	food cart	\$250
5.12	seasonal permanent food stand	\$250
5.13	seasonal temporary food stand	\$250
5.14	mobile food unit	\$350
5.15 Alcohol	beer or wine table service	\$150
5.16	alcohol service from bar	\$250
5.17 Lodging	less than 25 rooms	\$375
5.18	25 to less than 100 rooms	\$400
5.19	100 rooms or more	\$500
5.20	less than five cabins	\$350
5.21	five to less than ten cabins	\$400
5.22	ten cabins or more	\$450

5.23 (f) When existing food and beverage service establishments, hotels, motels, lodging
 5.24 establishments, or resorts, ~~seasonal food stands, and mobile food units~~ are extensively
 5.25 remodeled, a fee of \$250 must be submitted with the remodeling plans. ~~The fee for~~
 5.26 ~~this construction plan review is as follows:~~ A fee of \$250 must be submitted for new
 5.27 construction or remodeling for a restaurant with a limited food menu selection, a seasonal
 5.28 permanent food stand, a mobile food unit, or a food cart, or for a hotel, motel, resort, or
 5.29 lodging establishment addition of less than five sleeping units.

5.30 Service Area	Type	Fee
5.31 Food	limited food menu	\$250
5.32	small establishment	\$300
5.33	medium establishment	\$350
5.34	large food establishment	\$400
5.35	additional food service	\$150
5.36 Transient food service	food cart	\$250
5.37	seasonal permanent food stand	\$250
5.38	seasonal temporary food stand	\$250
5.39	mobile food unit	\$250
5.40 Alcohol	beer or wine table service	\$150
5.41	alcohol service from bar	\$250

6.1	Lodging	less than 25 rooms	\$250
6.2		25 to less than 100 rooms	\$300
6.3		100 rooms or more	\$450
6.4		less than five cabins	\$250
6.5		five to less than ten cabins	\$350
6.6		ten cabins or more	\$400

6.7 (g) Seasonal temporary food stands and special event food stands are not required to
6.8 submit construction or remodeling plans for review.

6.9 (h) Youth camps shall pay an annual single fee for food and lodging as follows:

6.10 (1) camps with up to 99 campers, \$325;

6.11 (2) camps with 100 to 199 campers, \$550; and

6.12 (3) camps with 200 or more campers, \$750.

6.13 (i) A youth camp which pays fees under paragraph (d) is not required to pay fees
6.14 under paragraph (h).

6.15 Subd. 3a. **Statewide hospitality fee.** Every person, firm, or corporation that
6.16 operates a licensed boarding establishment, food and beverage service establishment,
6.17 seasonal temporary or permanent food stand, special event food stand, mobile food unit,
6.18 food cart, resort, hotel, motel, or lodging establishment in Minnesota must submit to the
6.19 commissioner a \$35 annual statewide hospitality fee for each licensed activity. The fee
6.20 for establishments licensed by the Department of Health is required at the same time the
6.21 licensure fee is due. For establishments licensed by local governments, the fee is due by
6.22 July 1 of each year.

6.23 Subd. 4. **Posting requirements.** Every food and beverage service establishment,
6.24 for-profit youth camp, hotel, motel, lodging establishment, public pool, or resort must have
6.25 the license posted in a conspicuous place at the establishment. Mobile food units, food
6.26 carts, and seasonal temporary food stands shall be issued decals with the initial license and
6.27 each calendar year with license renewals. The current license year decal must be placed on
6.28 the unit or stand in a location determined by the commissioner. Decals are not transferable.

6.29 Sec. 2. Minnesota Statutes 2010, section 177.24, subdivision 1, is amended to read:

6.30 Subdivision 1. **Amount.** (a) For purposes of this subdivision, the terms defined in
6.31 this paragraph have the meanings given them.

6.32 (1) "Large employer" means an enterprise whose annual gross volume of sales
6.33 made or business done is not less than \$625,000 (exclusive of excise taxes at the retail
6.34 level that are separately stated) and covered by the Minnesota Fair Labor Standards Act,
6.35 sections 177.21 to 177.35.

7.1 (2) "Small employer" means an enterprise whose annual gross volume of sales made
 7.2 or business done is less than \$625,000 (exclusive of excise taxes at the retail level that
 7.3 are separately stated) and covered by the Minnesota Fair Labor Standards Act, sections
 7.4 177.21 to 177.35.

7.5 (b) Except as otherwise provided in sections 177.21 to 177.35, every large employer
 7.6 must pay each employee wages at a rate of at least \$5.15 an hour beginning September
 7.7 1, 1997, and at a rate of at least \$6.15 an hour beginning August 1, 2005. Every small
 7.8 employer must pay each employee at a rate of at least \$4.90 an hour beginning January 1,
 7.9 1998, and at a rate of at least \$5.25 an hour beginning August 1, 2005.

7.10 (c) Notwithstanding paragraph (b), during the first 90 consecutive days of
 7.11 employment, an employer may pay an employee under the age of 20 years a wage of \$4.90
 7.12 an hour. No employer may take any action to displace any employee, including a partial
 7.13 displacement through a reduction in hours, wages, or employment benefits, in order to
 7.14 hire an employee at the wage authorized in this paragraph.

7.15 (d) Notwithstanding paragraph (b) and subdivision 2, every large employer must
 7.16 pay an employee receiving gratuities at a rate that is the greater of: (i) at least \$6.55 per
 7.17 hour; or (ii) at least \$7.25 per hour if the employee does not earn sufficient gratuities
 7.18 during the pay period so that the sum of \$6.55 per hour and gratuities received is at least
 7.19 \$12 per hour for the pay period.

7.20 Sec. 3. Minnesota Statutes 2010, section 177.24, subdivision 2, is amended to read:

7.21 Subd. 2. **Gratuities not applied.** Except as provided in section 177.24, subdivision
 7.22 1, paragraph (d), no employer may directly or indirectly credit, apply, or utilize gratuities
 7.23 towards payment of the minimum wage set by this section or federal law.

7.24 Sec. 4. Minnesota Statutes 2010, section 268.035, subdivision 24, is amended to read:

7.25 Subd. 24. **Taxable wages.** (a) "Taxable wages" means those wages paid to an
 7.26 employee in covered employment each calendar year up to an amount equal to 60 percent
 7.27 of the state's average annual wage, rounded to the nearest \$1,000. For the purpose of
 7.28 this subdivision, taxable wages does not include income from tips or gratuities paid to
 7.29 an employee by a customer of an employer that is greater than or equal to two times the
 7.30 applicable minimum wage rate.

7.31 (b) Taxable wages includes the amount of wages paid for covered employment by
 7.32 the employer's predecessor when there has been an experience rating history transfer
 7.33 under section 268.051, subdivision 4.

8.1 Sec. 5. Minnesota Statutes 2010, section 297A.68, is amended by adding a subdivision
8.2 to read:

8.3 Subd. 42. **Complimentary meals and beverages.** Meals, nonalcoholic beverages,
8.4 and alcoholic beverages provided by a restaurant as defined under section 157.15,
8.5 subdivision 12, to a customer at no cost to the customer are exempt.

8.6 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
8.7 June 30, 2011.

8.8 Sec. 6. Minnesota Statutes 2010, section 297A.68, is amended by adding a subdivision
8.9 to read:

8.10 Subd. 43. **Employee food and drink.** Prepared food and drinks purchased for
8.11 and served to employees of restaurants defined under section 157.15, subdivision 12,
8.12 are exempt.

8.13 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
8.14 June 30, 2011.

8.15 Sec. 7. Minnesota Statutes 2010, section 297A.68, subdivision 5, is amended to read:

8.16 Subd. 5. **Capital equipment.** (a) Capital equipment is exempt. The tax must be
8.17 imposed and collected as if the rate under section 297A.62, subdivision 1, applied, and
8.18 then refunded in the manner provided in section 297A.75.

8.19 "Capital equipment" means machinery and equipment purchased or leased, and used
8.20 in this state by the purchaser or lessee primarily for manufacturing, fabricating, mining,
8.21 or refining tangible personal property to be sold ultimately at retail if the machinery and
8.22 equipment are essential to the integrated production process of manufacturing, fabricating,
8.23 mining, or refining. Capital equipment also includes machinery and equipment
8.24 used primarily to electronically transmit results retrieved by a customer of an online
8.25 computerized data retrieval system and machinery and equipment used by restaurants in
8.26 the furnishing, preparing, or serving of prepared foods as defined in section 297A.61,
8.27 subdivision 31.

8.28 (b) Capital equipment includes, but is not limited to:

8.29 (1) machinery and equipment used to operate, control, or regulate the production
8.30 equipment;

8.31 (2) machinery and equipment used for research and development, design, quality
8.32 control, and testing activities;

9.1 (3) environmental control devices that are used to maintain conditions such as
 9.2 temperature, humidity, light, or air pressure when those conditions are essential to and are
 9.3 part of the production process;

9.4 (4) materials and supplies used to construct and install machinery or equipment;

9.5 (5) repair and replacement parts, including accessories, whether purchased as spare
 9.6 parts, repair parts, or as upgrades or modifications to machinery or equipment;

9.7 (6) materials used for foundations that support machinery or equipment;

9.8 (7) materials used to construct and install special purpose buildings used in the
 9.9 production process;

9.10 (8) ready-mixed concrete equipment in which the ready-mixed concrete is mixed
 9.11 as part of the delivery process regardless if mounted on a chassis, repair parts for
 9.12 ready-mixed concrete trucks, and leases of ready-mixed concrete trucks; and

9.13 (9) machinery or equipment used for research, development, design, or production
 9.14 of computer software.

9.15 (c) Capital equipment does not include the following:

9.16 (1) motor vehicles taxed under chapter 297B;

9.17 (2) machinery or equipment used to receive or store raw materials;

9.18 (3) building materials, except for materials included in paragraph (b), clauses (6)
 9.19 and (7);

9.20 (4) machinery or equipment used for nonproduction purposes, including, but not
 9.21 limited to, the following: plant security, fire prevention, first aid, and hospital stations;
 9.22 support operations or administration; pollution control; and plant cleaning, disposal of
 9.23 scrap and waste, plant communications, space heating, cooling, lighting, or safety;

9.24 (5) farm machinery and aquaculture production equipment as defined by section
 9.25 297A.61, subdivisions 12 and 13;

9.26 (6) machinery or equipment purchased and installed by a contractor as part of an
 9.27 improvement to real property;

9.28 ~~(7) machinery and equipment used by restaurants in the furnishing, preparing, or~~
 9.29 ~~serving of prepared foods as defined in section 297A.61, subdivision 31;~~

9.30 ~~(8)~~ machinery and equipment used to furnish the services listed in section 297A.61,
 9.31 subdivision 3, paragraph (g), clause (6), items (i) to (vi) and (viii);

9.32 ~~(9)~~ (8) machinery or equipment used in the transportation, transmission, or
 9.33 distribution of petroleum, liquefied gas, natural gas, water, or steam, in, by, or through
 9.34 pipes, lines, tanks, mains, or other means of transporting those products. This clause
 9.35 does not apply to machinery or equipment used to blend petroleum or biodiesel fuel
 9.36 as defined in section 239.77; or

10.1 ~~(10)~~(9) any other item that is not essential to the integrated process of manufacturing,
10.2 fabricating, mining, or refining.

10.3 (d) For purposes of this subdivision:

10.4 (1) "Equipment" means independent devices or tools separate from machinery but
10.5 essential to an integrated production process, including computers and computer software,
10.6 used in operating, controlling, or regulating machinery and equipment; and any subunit or
10.7 assembly comprising a component of any machinery or accessory or attachment parts of
10.8 machinery, such as tools, dies, jigs, patterns, and molds.

10.9 (2) "Fabricating" means to make, build, create, produce, or assemble components or
10.10 property to work in a new or different manner.

10.11 (3) "Integrated production process" means a process or series of operations through
10.12 which tangible personal property is manufactured, fabricated, mined, or refined. For
10.13 purposes of this clause, (i) manufacturing begins with the removal of raw materials
10.14 from inventory and ends when the last process prior to loading for shipment has been
10.15 completed; (ii) fabricating begins with the removal from storage or inventory of the
10.16 property to be assembled, processed, altered, or modified and ends with the creation
10.17 or production of the new or changed product; (iii) mining begins with the removal of
10.18 overburden from the site of the ores, minerals, stone, peat deposit, or surface materials and
10.19 ends when the last process before stockpiling is completed; and (iv) refining begins with
10.20 the removal from inventory or storage of a natural resource and ends with the conversion
10.21 of the item to its completed form.

10.22 (4) "Machinery" means mechanical, electronic, or electrical devices, including
10.23 computers and computer software, that are purchased or constructed to be used for the
10.24 activities set forth in paragraph (a), beginning with the removal of raw materials from
10.25 inventory through completion of the product, including packaging of the product.

10.26 (5) "Machinery and equipment used for pollution control" means machinery and
10.27 equipment used solely to eliminate, prevent, or reduce pollution resulting from an activity
10.28 described in paragraph (a).

10.29 (6) "Manufacturing" means an operation or series of operations where raw materials
10.30 are changed in form, composition, or condition by machinery and equipment and which
10.31 results in the production of a new article of tangible personal property. For purposes of
10.32 this subdivision, "manufacturing" includes the generation of electricity or steam to be
10.33 sold at retail.

10.34 (7) "Mining" means the extraction of minerals, ores, stone, or peat.

10.35 (8) "Online data retrieval system" means a system whose cumulation of information
10.36 is equally available and accessible to all its customers.

11.1 (9) "Primarily" means machinery and equipment used 50 percent or more of the time
11.2 in an activity described in paragraph (a).

11.3 (10) "Refining" means the process of converting a natural resource to an intermediate
11.4 or finished product, including the treatment of water to be sold at retail.

11.5 (11) This subdivision does not apply to telecommunications equipment as
11.6 provided in subdivision 35, and does not apply to wire, cable, fiber, poles, or conduit
11.7 for telecommunications services.

11.8 **EFFECTIVE DATE.** This section is effective for sales and purchases made after
11.9 June 30, 2011.

11.10 Sec. 8. **RESTAURANT RECOVERY AND JOBS CREATION ACT.**

11.11 This act shall be known as the Restaurant Recovery and Jobs Creation Act of 2011.