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Cottage Food Law Statutes:

Wisconsin



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Wis. Stat. § 97.30. Retail food establishments

(1) Definitions. In this section:

- (a) “Agent city or county” means a city or county granted agent status by the department under s. 97.41.
- (b) “Food processing” has the meaning given under s. 97.29(1)(g).
- (bm) Except as provided by the department by rule, “potentially hazardous food” means a food that requires temperature control because it is in a form capable of supporting any of the following:
 - 1. Rapid and progressive growth of infectious or toxigenic microorganisms.
 - 2. Growth and toxin production of *Clostridium botulinum*.
 - 3. In raw shell eggs, growth of *Salmonella enteritidis*.
- (c) “Retail food establishment” means a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing. “Retail food establishment” includes a restaurant or temporary restaurant. “Retail food establishment” does not include an establishment holding a license under s. 97.605, to the extent that the activities of the establishment are covered by that license, or a stand operated by a minor, as defined in s. 66.0416(1)(b).

(2) License.

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



97.41(1m) may issue to a retail food establishment the license required under par. (a) at any time during the year. A license issued under this subdivision shall expire one year from the date of its issuance.

2. A retail food establishment may request an extension to the term of a license issued under par. (a) by the local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.41(1m) for the purpose of aligning the annual term of any other license or permit issued to that retail food establishment with the annual term of a license to be issued to that retail food establishment under subd. 1. The local health department may require a retail food establishment that receives an extension under this subdivision to pay a prorated fee in an amount determined by dividing the license fee imposed under s. 97.41(4) by 12 and multiplying the quotient by the number of months by which the license issued under par. (a) is extended under this subdivision.

(b) Exemptions.

1. A license is not required under this section for any of the following:
 - a. A retail food establishment that sells only packaged foods or fresh fruits and vegetables, if the establishment does not sell potentially hazardous food and does not engage in food processing.
 - b. A retail food establishment which is primarily engaged in selling fresh fruits and vegetables, honey, cider or maple syrup produced by the operator of the retail food establishment, if that retail food establishment is not engaged in other food processing activities.
 - c. A retail food establishment which is exempted from licensing by the department by rule. If an establishment for which a license has been issued under s. 97.605 is incidentally engaged in operating a retail food establishment at the same location, the department may exempt by rule the establishment from licensing under this section.
 - d. A retail food establishment where popcorn is popped, if the retail food establishment is not required to obtain a license under this section to sell or process any other food.
2. If a dairy plant licensed under s. 97.20, a food processing plant licensed under s. 97.29 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of any retail food establishment at the same location, the department may exempt by rule that establishment from licensing under this section.

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



- (d) Initial inspection of micro market. The department or an agent city or county may issue a license for a new retail food establishment that is a micro market before it inspects the new retail food establishment that is a micro market for compliance with this section and rules promulgated under this section. Before one year after the date that the department or the agent city or county issues a license for a new retail food establishment that is a micro market, it shall inspect the new retail food establishment for compliance with this section and rules promulgated under this section.
- (3) Fees; retail food establishments licensed by department.
- (a) License fee. Except as provided under sub. (3s), an applicant for a retail food establishment license shall pay the license fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated license fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The license fee for that year shall be recomputed based on actual gross receipts. If the license fee based on actual gross receipts differs from the estimated license fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's license fee.
- (am) Weights and measures inspection fee. An applicant for a retail food establishment license shall pay the weights and measures inspection fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated weights and measures inspection fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The weights and measures inspection fee for that year shall be recomputed based on actual gross receipts. If the weights and measures inspection fee based on actual gross receipts differs from the estimated weights and measures inspection fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's weights and measures inspection fee. This paragraph does not apply to a retail food establishment that is a micro market.
- (b) Reinspection fee. If the department reinspects a retail food establishment because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the retail food establishment operator the reinspection fee specified under sub. (3m). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from



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

- (c) Surcharge for operating without a license. An applicant for a retail food establishment license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3m) whichever is less, or if the applicant operates a micro market a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3s) whichever is less, if the department determines that, within one year prior to submitting a license application, the applicant operated the retail food establishment without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the retail food establishment, but does not constitute evidence of a violation of any law.
- (d) Licensing contingent on payment of fees. The department may not issue or renew a retail food establishment license unless the license applicant pays all fees which are due and payable under this subsection and sub. (3m) or (3s), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.
- (3m) Fee amounts. The department shall specify by rule the amount of the fees under sub. (3) for a restaurant. Unless otherwise required by department rule, the fees required under sub. (3) for a retail food establishment other than a restaurant are:
 - (a) For a retail food establishment, other than a restaurant, that has annual food sales of \$25,000 or more but less than \$1,000,000 and that processes potentially hazardous food, the following amounts:
 1. An annual license fee of \$90.
 2. A reinspection fee of \$60.
 3. An annual weights and measures inspection fee of \$45, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04(1) or that recovers fees from the retail food establishment under s. 98.04(2) for the purpose of enforcement of the provisions of ch. 98.
 - (b) For a retail food establishment, other than a restaurant, that has annual food sales of \$1,000,000 or more and that processes potentially hazardous food, the following amounts:
 1. An annual license fee of \$210.
 2. A reinspection fee of \$140.
 3. An annual weights and measures inspection fee of \$100, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04(1) or that



recovers fees from the retail food establishment under s. 98.04(2) for the purpose of enforcement of the provisions of ch. 98.

- (c) For a retail food establishment, other than a restaurant, that has annual food sales of \$25,000 or more and that is engaged in food processing, but that does not process potentially hazardous food, the following amounts:
 - 1. An annual license fee of \$80.
 - 2. A reinspection fee of \$80.
 - 3. An annual weights and measures inspection fee of \$25, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04(1) or that recovers fees from the retail food establishment under s. 98.04(2) for the purpose of enforcement of the provisions of ch. 98.
- (cm) For a retail food establishment, other than a restaurant, that has annual food sales of less than \$25,000 and that is engaged in food processing, an annual license fee of \$40 and a reinspection fee of \$40.
- (d) For a retail food establishment, other than a restaurant, that is not engaged in food processing, an annual license fee of \$20 and a reinspection fee of \$50.
- (3s) Fees; micro markets. An applicant for a retail food establishment license to operate a micro market shall pay one of the following annual license fee amounts:
 - (a) For one micro market located in a building, \$40.
 - (b) For 2 or more micro markets located in the same building, \$60.
- (4) Fees; retail food establishment licensed by agent city or county.
 - (a) Subsection (3) does not apply to any retail food establishment licensed by an agent city or county under s. 97.41. Except as provided under par. (b), an applicant for a retail food establishment license issued by an agent city or county shall pay fees established by the agent city or county under s. 97.41.
 - (b) An applicant for a retail food establishment license to be issued by an agent city or county shall pay the fee under sub. (3s) or s. 97.41(4)(am)1. b. if the application is for a micro market.
- (5) Rule making. The department may promulgate rules to establish the fees required under sub. (3) or to govern the operation of retail food establishments. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling, display and storage; and food sources and food labeling. No rule promulgated under this subsection may prohibit dogs from the premises of a retail food establishment that sells only previously packaged food.

Credits

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