WISCONSIN RESTAURANT ASSOCIATION

Menu of Policy Priorities

Regulation of Cottage Foods (Food prepared and sold without inspection or licensing)

Proper food safety practices are the number one priority for restaurants and other licensed retail food establishments, such as bakeries and grocery stores. Protecting public health and their own business is important for restaurant owners. In fact, the WRA was founded in 1933 in order to force the state of Wisconsin to develop what is now the Wisconsin Food Code, which provides food safety regulation for all retail food establishments. The WRA is a strong supporter of science-based regulation that protects the public and the restaurant industry.

Up until 2018, any person or business needed to obtain a license from either the Department of Agriculture, Trade and Consumer Protection (DATCP) or one of its local agent health departments to sell food to the public as a business. Two court cases in Lafayette County have challenged DATCP's authority to regulate home-based, for-profit food businesses and the requirement of licensure to sell to the public. A county judge ruled in the first case that statute does not grant DATCP the authority to prevent home based businesses from selling "non-hazardous" food directly to the consumer. The same ruling came in the second case and an appeal by the state is in progress. In both cases the presiding judge specifically referenced that the legislature did not do its due diligence regarding the oversight of home based food businesses and therefore the lack of granting authority means that anyone can produce food in their home and sell to the public. These rulings not only go against sound food safety principles, but it has also created a lot of confusion on what foods can and cannot be created in a home kitchen and sold to the public. These types of businesses are often referred to as cottage food businesses.

WRA has many concerns about the safety of food created in an unlicensed, uninspected home-based kitchen. This is not about church bake sales or potluck suppers. These are for-profit businesses, which currently have no regulations, other than what is laid out by court decree - which is ambiguous, limited, and does not take into account industry supported food safety principles.

Legislation requiring registration or licensure is needed to put some regulatory structure in place for cottage food businesses. Many of these unlicensed businesses are selling foods that are not even allowed under the court rulings, such as meat pies and cheesecakes. Some are even catering pig roasts or selling fully prepared meals. As these cottage food businesses grow, at some point a licensed commercial kitchen needs to be required. As it stands now, these unlicensed businesses are not only producing foods that are considered potentially hazardous, they directly compete with local businesses that are required to have licensing and inspection. This creates an unlevel playing field for licensed businesses.

Rep. Green and Senator Quinn have introduced AB 897/SB 813 to put some regulations in place to protect the public, while not curbing entrepreneurship. We understand the need to promote entrepreneurship and support the growth of small businesses. There also needs to be some common sense rules in place on what can and cannot be sold out of unlicensed, home kitchens and along with minimum food safety requirements.

Our Ask: Support AB 897/SB 813 which gives DATCP some regulatory authority over cottage food businesses. Keeping with the status quo of no oversight is unfair to licensed food businesses and does not protect public health.

RESTAURANT ADVOCACY DAY

BE THE VOICE

Regulation of Soda Equipment

The issue: The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates rules as they apply to soda equipment and the purchasing terms between soda wholesalers and retailers. Current law mandates that soda wholesalers must either sell or lease equipment (including vending machines, dispensing equipment and coolers) to retailers for no less than a monthly charge of 1/60th of the equipment's cost.

These archaic regulations (ATCP 102.12(2)) require retailers to pay a significant rental fee for soda equipment, which is usually branded and provides the manufacturer with advertising benefits and provides the advantage of prime retail space. Further, we believe this restriction is a disservice to both the retailer and the soda wholesaler due to the lack of flexibility in negotiating terms for equipment based on what is most efficient and effective for both parties. All of Wisconsin's neighboring states do not have this rule, which makes operations for our multi-state members difficult.

We have heard many stories from our members regarding their frustration with this rule. They would much rather have the flexibility to negotiate the terms of their contracts for both equipment and product. We also have been informed by our larger members that while they must pay the standard equipment fees required by rule, they just negotiate harder on the cost of the products or require other types of concessions to bring the total cost down. Those large members readily admit they have the buying power to do that. Our smaller members do not necessarily have that same power, because they can only negotiate on the price of product.

One concern of note that our members have brought to us relates to use of competitor's products on the equipment they are renting. ATCP 102.12 (2)(a) specifically says that rental agreements cannot prohibit the use of competitors products while using the rented equipment. What is happening is that the wholesalers instead put exclusivity requirements in their product contracts as a way to get around this part of the rule. We also believe repealing this rule will give more ability for restaurants and bars to use equipment supplied by independent equipment providers who are not linked to the large wholesalers and help them utilize product from the many craft soda producers in the state, in addition to serving the large national brands. We also know that many of our broadline restaurant distributors have the ability to distribute soda products to restaurants and repeal of this rule would help facilitate those sales.

We have heard from many of our members that they continue to pay the 1/60th rental payments well after the 60-month requirement is over and do not receive new equipment. Many did not realize this was happening until we informed our members about the administrative rule and our support for these bills.

Our ask: Support AB 155/SB 148 which repeals the rental requirement on soda dispensing equipment and coolers, coin-operated vending machines as well as dispensing equipment and display coolers. Government should not be placing regulations into contracts, which in turn hurt small businesses. Similar legislation passed the Assembly in 2018 and we urge you to pass this bill as well.

Data Privacy Regulation

The Issue: Customer data regulation legislation - AB 466/ SB 642 - will impose a costly and ambiguous compliance regime on Wisconsin businesses of all sizes – including all restaurants, both independent and multi-unit.

Staggering compliance costs will negatively impact businesses small, medium, and large. The Information Technology and Innovation Foundation (ITIF) studied the cost of compliance with different state privacy laws and found that they "could impose out-of-state costs of $98 billion and $112 billion annually" and the cost to small businesses could be as high as $23 billion annually.

In Wisconsin, complying with privacy laws across the country is estimated to cost $2.8 billion, $600 million of which falls on small businesses. Since publication, additional state regulatory regimes have been enacted and decade-high inflation has most certainly raised this cost estimate. Time, effort, and money that could be used to increase wages or hire new employees, offer innovative products, or provide better customer service will be diverted toward compliance with more government regulation and particularly burden medium- and small-businesses.

A state-by-state patchwork is unworkable and confusing for consumers and businesses. Twelve states have data regulatory frameworks. An additional six states (including Wisconsin) have legislation pending. Even when other states' regulatory regimes are used as a model, "each proposal remains unique," with its own nuances and exceptions having a compounding impact on compliance efforts. Wisconsin should not exacerbate the web of state-by-state compliance by enacting this bill.

The bills exempt certain entities and include exceptions from the requirements of the bill, including some covered by federal privacy regulatory frameworks. The inclusion of these exceptions and exemptions shows that a unified, comprehensive, Federal approach to consumer data privacy is the most prudent action to ensure that all businesses are on equal, competitive footing and not disadvantaged by mounting patchwork compliance costs. Many companies and consumer-interfaces already require privacy policies as the private sector responds to market-driven consumer demands and preferences. Both major application marketplace platforms require a privacy policy. The appearance of "Privacy Policy" or "Terms & Conditions" are nearly universal on every website, and increasingly, "Cookie Notice" pop-up windows and banners that allow consumers to review or choose their privacy settings.

Unfortunately, as amended, AB 466 /SB 642 would even prohibit the use of common, user-friendly privacy-choice engagement methods. The bills, as amended, contains language that, on top of the underlying bill, exacerbates the compliance burden and unnecessarily penalizes businesses without an opportunity to come into compliance. The amendments overly-narrow "consent" by prohibiting common, consumer-friendly, straightforward options found nearly universally on websites today and when providing a consumer product or service. These amendments will make doing business online excessively difficult by chasing an unattainable standard while simultaneously burdening customers with more disruptive means to provide information and obtain consent, deterring a customer from engaging with or purchasing from a business. Similarly, the amendment imposes an unattainable, undefined recurring requirement to conduct subjective impact assessments. Businesses are subject to penalty if the assessment is not conducted with the frequency according to the subjective whim of the enforcer, each assessment adding to compliance costs and wasting employee time complying with government regulations and not serving customers.

The amendments also sunsets the right to correct provision, giving businesses a reasonable opportunity to correct inadvertent non-compliance before an enforcement action. As initially drafted, repeated violations after correction are still subject to enforcement and fine; it is unnecessary to potentially penalize businesses, including small- and medium-sized businesses, with per-violation monetary penalties without the opportunity to correct what could be non-malicious accidental non-compliance with a complicated and ambiguous regulatory regime.

Technological innovation has revolutionized how we buy groceries, bank and pay bills, discover and view entertainment, find a ride across town or to and from the airport, order food and other goods, and much more, by providing unprecedented convenience and opportunities. While well intentioned, state-by-state consumer privacy regulations will be cost-prohibitive for businesses and confusing for both businesses and consumers. As such, please oppose SB 642 and AB 466

Our Ask: Oppose AB 466/SB 642, as amended. While well-intentioned legislation, these bills will impose costly compliance burdens on restaurants and other small businesses. Privacy laws such as these must be debated and implemented at the federal level.

Alcohol Delivery

The Issue: The WRA represents over 7,000 restaurant locations, most of which have Class B and C licenses to serve alcohol.

Restaurants need help to stay in business due to long term financial pain inflicted during the pandemic and the difficult economic situation they are currently facing (see WRA State of the Industry handout). The restaurant and bar industry has razor thin profit margins, even prior to the pandemic. Sales of alcohol for on-premise consumption is where many restaurants make their profit, while profit from food sales are very tight, or break even at best, as labor and food costs continue to increase. While delivery of food off premise provides some cash flow, it provides very little if no margin for restaurants to use to pay their bills. Lack of employees is also eating into on-premise food and beverage sales, since restaurants are not able to serve as many patrons as they need to generate revenue.

Consumer dining trends were already changing prior to the pandemic. The pandemic forced many diners who wanted restaurant quality meals to have that food delivered rather than dining in. Even now, almost three years after being shut down, consumers still want restaurant quality food delivered rather than dine out. Research shows delivery of restaurant meals will not go away. With the trend to dine off-premise comes a reduction in high-margin alcohol sales. Our survey of Wisconsin residents shows that 76 percent of adults age 21+ would favor a proposal to allow alcohol to be delivered with their food orders.

Many Wisconsin restaurants and bars either have hired their own delivery drivers or are contracting with third party delivery companies in order to meet consumer demand for delivered meals. As more traffic moves off premise, offering alcohol delivery can give restaurants an opportunity to recapture the high-margin alcohol sales they are losing as consumers continue to use delivery of restaurant food. Current Wisconsin statute does not allow for the delivery of alcohol. Forty states, including neighboring Michigan, Iowa and Illinois, have enacted laws that allow for the safe delivery of alcohol, including protocols to prevent purchase by underage persons. While other groups believe that alcohol delivery cuts into on-premise sales, WRA believes that with the long term trend of restaurant food being eaten away from the restaurant, owners need to have tools to recapture the alcohol revenue that they already have lost and will continue to lose.

Our Ask: Sen. Stroebel and Rep. Duchow introduced AB 127/SB 130 to allow for safe delivery of alcohol. We strongly urge you to support committee hearings and passage of these bills.

RESTAURANT ADVOCACY DAY

September 1st School Start Date

The Issue: Wisconsin has had a K-12 September 1 school start date for more than twenty years. The WRA opposes legislation that would change Wisconsin's long-standing and reasonable September 1st school start date law. Wisconsin's economy will lose millions of dollars, thousands of jobs for young workers, and families will lose well-deserved vacations when weather is at its best.

After more than a decade of debate in the Legislature during the 1990's and early 2000's, a compromise was finally reached between those who want a post-Labor Day school start and those who want the flexibility to start the school year in early to late August. September 1st was that compromise. In the hospitality industry, we count on the business generated by families who vacation in Wisconsin in July and August. Families want to swim in Wisconsin lakes in the warm water of August, not in the cold water of early June, and many kids have summer school classes in June and team sporting events in July and early August. Revenue from tourists is greater in August, compared to June. If forced to trade a week in August for a week in June, our industry loses out on tens-of-millions of dollars, and thousands of young people lose out on a week of work during prime tourism season. Restaurants and other tourism businesses count on high school and college age employees being able to work until the end of August.

Removing the September 1 school start date would clearly lead to less revenue for Wisconsin businesses and less tax revenue for Wisconsin state government during the peak summer vacation months when visitor spending is at its highest. Minnesota and Michigan, two major competitors to Wisconsin tourism, have state laws requiring schools to start after Labor Day. Further, moving the school start date back into August would mean a loss of high school and college seasonal employees when the state's tourism industry is already facing a labor shortage.

There is no data from schools to support changing the current start date. Local school boards and districts have great flexibility in setting their school calendar, including selecting holiday breaks, setting staff development days, and determining school hours. Recent advancements in technology and virtual schooling make this flexibility even greater. Advancement Placement (AP) course work can begin voluntarily over the summer by students interested in these courses. Since the September 1 school start date took effect, AP course participation and scores have increased significantly and are above the national average. Summers in Wisconsin are short enough. August has warmer temperatures than June, which is perfect for family vacations, but can create uncomfortable learning environments in schools not equipped with air conditioning.

Our Ask: Support keeping Wisconsin's K-12 School Start Date as September 1 or after. Please do not support legislation such as AB 435/SB 429, which changes the date and adds further exemptions.

Public Assistance Benefit Cliffs

The Issue: One in every three adult workers had their first job working in a restaurant. This is because restaurants have many "entry-level" positions that are meant to be temporary stepping-stones as people enter the work force. Some people move their way up the career ladder within our industry. Others enter other career pathways. Either way, restaurants are where many learn work soft skills, basic work ethics and how to work with colleagues. In many parts of the state, these entry level positions are now paying adults $15/hour or more.

Our members tell us that many times when they wish to promote an employee to a new position, with higher pay and full-time hours, often the employee turns down the position. Why? Because the increase in pay may not cover the loss of the public assistance benefits the employee receives. In addition, current market conditions have significantly increased hourly wages in restaurants, making it even harder for employees to earn more without losing all of their benefits at once.

Our current public assistance programs play an important role in allowing people to maintain a standard of living in spite of situations or personal challenges that may make it harder for them to gain employment or work full time. However, the system is woefully out of date and actually keeps people it is meant to help from earning more money and moving up the career ladder.

Public assistance programs need to be updated and reformed to allow people to increase their income and gradually reduce their need for additional help. Unfortunately, many assistance programs cut off help abruptly or in drastic reductions, which make it impossible for people to take promotions or increase their work hours. Many times, a $1.00 increase in hourly wages or eight additional work hours/week can put a person above the benefit threshold, and they abruptly lose thousands of dollars in assistance, which is valued more than their increase. This upside-down ratio – aka a cliff - makes its it hard for a person to follow a career path that leads them to independence from assistance. The gradual decline needs to be a scale based on wages earned on not based on an arbitrary timeline.

The Ask: The WRA urges elected officials to reform Wisconsin's public assistance programs. These programs need to be updated to take into account the current labor market's wages and the need to gradually help people move away from public assistance. Elected officials need to remove the barriers to work and reward those who are learning additional skills to move up the career ladder.

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