

# Senate Study Bill 103

## Conference Committee Text

PAG LIN

1 1 Section 1. NEW SECTION. 137F.1 DEFINITIONS.  
1 2 For the purpose of this chapter:  
1 3 1. "Bed and breakfast home" means a private home which  
1 4 provides lodging and breakfast for guests, the home is owner-  
1 5 occupied, the number of available guest bedrooms does not  
1 6 exceed six, the breakfast is the only meal offered, the number  
1 7 of guests served does not exceed eighteen, and the consumer is  
1 8 informed by statements contained in published advertisements,  
1 9 mailed brochures, or placards posted at the registration area  
1 10 that the food is prepared in a kitchen that is not regulated  
1 11 and inspected by the regulatory authority.  
1 12 2. "Commissary" means a food establishment used for  
1 13 preparing, fabricating, packaging, and storage of food or food  
1 14 products for distribution and sale through the food  
1 15 establishment's own food establishment outlets.  
1 16 3. "Department" means the department of inspections and  
1 17 appeals.  
1 18 4. "Director" means the director of the department of  
1 19 inspections and appeals.  
1 20 5. "Farmers market" means a marketplace which seasonally  
1 21 operates principally as a common market for fresh fruits and  
1 22 vegetables on a retail basis for off-the-premises consumption.  
1 23 6. "Food" means a raw, cooked, or processed edible  
1 24 substance, ice, beverage, or ingredient used or intended for  
1 25 use or for sale in whole or in part for human consumption, or  
1 26 chewing gum.  
1 27 7. "Food code" means the 1993 edition of the United States  
1 28 food and drug administration food code.  
1 29 8. "Food establishment" means an operation that stores,  
1 30 prepares, packages, serves, vends, or otherwise provides food  
1 31 for human consumption and includes a food service operation in  
1 32 a school, summer camps, residential service and halfway house  
1 33 substance abuse treatment facilities, correctional facilities  
1 34 operated by the department of corrections, the state training  
1 35 school, and the Iowa juvenile home. "Food establishment" does  
2 1 not include the following:  
2 2 a. A food processing plant.  
2 3 b. An establishment that offers only prepackaged foods  
2 4 that are nonpotentially hazardous.  
2 5 c. A produce stand or facility which sells only whole,  
2 6 uncut fresh fruits and vegetables.  
2 7 d. Premises which are licensed as a home food  
2 8 establishment as defined in section 137D.1.  
2 9 e. Premises which operate as a farmers market.  
2 10 f. Premises of a residence in which food that is  
2 11 nonpotentially hazardous is sold for consumption off-the-  
2 12 premises, if the food is labeled to identify the name and  
2 13 address of the person preparing the food and the common name  
2 14 of the food. As used in this subsection, food that is  
2 15 nonpotentially hazardous means only the following:  
2 16 (1) Baked goods, except the following: soft pies, bakery  
2 17 products with custard or cream fillings, or any other  
2 18 potentially hazardous goods.  
2 19 (2) Wholesome, fresh eggs that are kept at a temperature  
2 20 of forty-one degrees Fahrenheit or less.  
2 21 (3) Honey which is labeled with additional information as

2 22 provided by departmental rule.

2 23 g. A kitchen in a private home, if only food that is  
2 24 nonpotentially hazardous is prepared for sale or service at a  
2 25 function such as a religious or charitable organization's bake  
2 26 sale and if the consumer is informed by a clearly visible  
2 27 placard at the sales or service location that the food is  
2 28 prepared in a kitchen that is not subject to regulation and  
2 29 inspection by the regulatory authority or in an area where  
2 30 food that is prepared as specified above is sold or offered  
2 31 for human consumption.

2 32 h. A kitchen in a private home or a bed and breakfast  
2 33 home.

2 34 i. A private home that receives catered or home-delivered  
2 35 food.

3 1 j. Child day care facilities and other food establishment  
3 2 facilities located in hospitals or health care facilities and  
3 3 subject to inspection by other state agencies or divisions of  
3 4 this department.

3 5 k. Supply vehicles, the location of food vending machines,  
3 6 or a boarding house for permanent guests.

3 7 l. Establishments exclusively engaged in the processing of  
3 8 meat and poultry which are licensed pursuant to section  
3 9 189A.3.

3 10 9. "Food processing plant" means a commercial operation  
3 11 that manufactures, packages, labels, or stores food for human  
3 12 consumption and does not provide food directly to a consumer.

3 13 10. "Mobile food unit" means a food establishment that is  
3 14 readily movable, which either operates up to three consecutive  
3 15 days at one location or returns to a home base of operation at  
3 16 the end of each day.

3 17 11. "Municipal corporation" means a political subdivision  
3 18 of this state.

3 19 12. "Perishable food" means potentially hazardous food.

3 20 13. "Potentially hazardous food" means a food that is  
3 21 natural or synthetic and is in a form capable of supporting  
3 22 the rapid and progressive growth of infectious or toxigenic  
3 23 microorganisms, or the growth and toxin production of  
3 24 clostridium botulinum. "Potentially hazardous food" includes  
3 25 an animal food that is raw or heat-treated, a food of plant  
3 26 origin that is heat-treated or consists of raw seed sprouts,  
3 27 cut melons, and garlic and oil mixtures. "Potentially  
3 28 hazardous food" does not include the following:

3 29 a. An air-cooled hard-boiled egg with shell intact.

3 30 b. A food with a water activity value of 0.85 or less.

3 31 c. A food with a hydrogen ion concentration (pH) level of  
3 32 4.6 or below when measured at twenty-four degrees Centigrade  
3 33 or seventy-five degrees Fahrenheit.

3 34 d. A food, in an unopened hermetically sealed container,  
3 35 that is commercially processed to achieve and maintain  
4 1 commercial sterility under conditions of nonrefrigerated  
4 2 storage and distribution.

4 3 14. "Pushcart" means a non-self-propelled vehicle food  
4 4 establishment limited to serving nonpotentially hazardous  
4 5 foods, commissary wrapped food maintained at proper  
4 6 temperatures, or limited to the preparation and serving of  
4 7 frankfurters.

4 8 15. "Regulatory authority" means the department or a  
4 9 municipal corporation that has entered into an agreement with  
4 10 the director pursuant to section 137F.3 for authority to  
4 11 enforce this chapter in its jurisdiction.

4 12 16. "Temporary food establishment" means a food  
4 13 establishment that operates for a period of no more than  
4 14 fourteen consecutive days in conjunction with a single event  
4 15 or celebration.

4 16 17. "Vending machine" means a food establishment which is  
4 17 a self-service device that, upon insertion of a coin, paper  
4 18 currency, token, card, or key, dispenses unit servings of food

4 19 in bulk or in packages without the necessity of replenishing  
4 20 the device between each vending operation.

4 21 18. "Vending machine location" means the physical site  
4 22 where the vending machines are installed and operated,  
4 23 including the storage and servicing areas on the premises that  
4 24 are used in conjunction with the vending machines.

4 25 Sec. 2. NEW SECTION. 137F.2 ADOPTION BY RULE.

4 26 The director shall adopt the food code with the following  
4 27 exceptions:

4 28 1. 3-201.11(B) shall be amended to allow food licensed  
4 29 under chapter 137D or food specified under section 137F.1,  
4 30 subsection 8, paragraph "f", to be used or offered for sale.

4 31 2. As otherwise amended by rules adopted pursuant to  
4 32 chapter 17A.

4 33 3. A nonprofit organization which engages in the serving  
4 34 of food not more than one day per calendar week nor two or  
4 35 more consecutive days is exempt from this chapter.

5 1 4. A food processing plant shall comply with the "Current  
5 2 Good Manufacturing Practices in Manufacturing, Processing,  
5 3 Packing, or Holding Human Food" as found in the latest version  
5 4 of 21 C.F.R., pt. 110, and with rules adopted by the  
5 5 department.

5 6 5. A vending machine commissary shall be inspected at  
5 7 least once each calendar year.

5 8 6. A vending machine which only dispenses prepackaged food  
5 9 that is nonpotentially hazardous is exempt from inspection and  
5 10 licensing, except upon receipt of a verified complaint by the  
5 11 regulatory authority.

5 12 Sec. 3. NEW SECTION. 137F.3 AUTHORITY TO ENFORCE.

5 13 The director shall regulate, license, and inspect food  
5 14 establishments and food processing plants and enforce this  
5 15 chapter. Municipal corporations shall not regulate, license,  
5 16 inspect, or collect license fees from food establishments and  
5 17 food processing plants, except as provided for in this  
5 18 chapter.

5 19 The state shall license and inspect a food processing plant  
5 20 which manufactures, packages, or labels food products. A  
5 21 municipal corporation may license and inspect, as authorized  
5 22 by this section, a food processing plant whose operation is  
5 23 limited to the storage of food products.

5 24 A municipal corporation may enter into an agreement with  
5 25 the director to provide that the municipal corporation shall  
5 26 license, inspect, and otherwise enforce this chapter within  
5 27 its jurisdiction. The director may enter into the agreement  
5 28 if the director finds that the municipal corporation has  
5 29 adequate resources to perform the required functions.

5 30 If the director enters into an agreement with a municipal  
5 31 corporation as provided by this section, the director shall  
5 32 provide that the inspection practices of a municipal  
5 33 corporation are spot-checked on a regular basis.

5 34 A municipal corporation that is responsible for enforcing  
5 35 this chapter within its jurisdiction pursuant to an agreement  
6 1 shall make an annual report to the director providing the  
6 2 following information:

6 3 1. The total number of licenses granted or renewed under  
6 4 this chapter during the year.

6 5 2. The number of licenses granted or renewed under this  
6 6 chapter during the year, broken down into the following  
6 7 categories:

- 6 8 a. Food establishments.
- 6 9 b. Food processing plants.
- 6 10 c. Mobile food units and pushcarts.
- 6 11 d. Temporary food establishments.
- 6 12 e. Vending machines.

6 13 3. The amount of money collected in license fees during  
6 14 the year.

6 15 4. Other information the director requests.

6 16 The director shall monitor municipal corporations to  
6 17 determine if they are enforcing this chapter within their  
6 18 respective jurisdictions. If the director determines that  
6 19 this chapter is not enforced by a municipal corporation, the  
6 20 director may rescind the agreement after reasonable notice and  
6 21 an opportunity for a hearing. If the agreement is rescinded,  
6 22 the director shall assume responsibility for enforcement in  
6 23 the jurisdiction involved.

6 24 Sec. 4. NEW SECTION. 137F.4 LICENSE REQUIRED.

6 25 A person shall not open or operate a food establishment or  
6 26 food processing plant until the regulatory authority has  
6 27 issued the person a license. Sale of products at wholesale to  
6 28 outlets not owned by a commissary owner requires a food  
6 29 processing plant license. A license shall expire one year  
6 30 from the date of issue. A license is renewable. All licenses  
6 31 issued under this chapter that are not renewed by the licensee  
6 32 on or before the expiration date shall be subject to a penalty  
6 33 of ten percent per month of the license fee if the license is  
6 34 renewed at a later date.

6 35 Sec. 5. NEW SECTION. 137F.5 APPLICATION FOR LICENSE.

7 1 An application form prescribed by the department for a  
7 2 license under this chapter shall be obtained from the  
7 3 department or the municipal corporation. A completed  
7 4 application shall be submitted to the appropriate regulatory  
7 5 authority.

7 6 The dominant form of business shall determine the type of  
7 7 license for establishments which engage in operations covered  
7 8 under both the definition of a food establishment and of a  
7 9 food processing plant.

7 10 The regulatory authority where the unit is domiciled shall  
7 11 issue a license for a mobile food unit.

7 12 An application for a license to operate an existing  
7 13 business shall be made at least thirty days before the  
7 14 expiration of the existing license.

7 15 Sec. 6. NEW SECTION. 137F.6 LICENSE FEES.

7 16 Either the department or the municipal corporation shall  
7 17 collect the following annual license fees:

7 18 1. For a mobile food unit or pushcart, seventy-five  
7 19 dollars.

7 20 2. For a temporary food establishment per fixed location,  
7 21 twenty-five dollars.

7 22 3. For a vending machine, twenty dollars for the first  
7 23 machine and five dollars for each additional machine.

7 24 4. For a food service operation in a school where food is  
7 25 prepared on-site, summer camp, residential service and halfway  
7 26 house substance abuse treatment facility, correctional  
7 27 facility operated by the department of corrections, the state  
7 28 training school, the Iowa juvenile home, and nutrition  
7 29 programs for the elderly, one hundred dollars.

7 30 5. For a food service operation in a school where food is  
7 31 not prepared on-site, fifty dollars.

7 32 6. For a food establishment or food processing plant with  
7 33 annual gross sales of under twenty thousand dollars, fifty  
7 34 dollars.

7 35 7. For a food establishment or food processing plant with  
8 1 annual gross sales of twenty thousand dollars or more but less  
8 2 than one hundred thousand dollars, one hundred dollars.

8 3 8. For a food establishment or food processing plant with  
8 4 annual gross sales of one hundred thousand dollars or more but  
8 5 less than two hundred fifty thousand dollars, one hundred  
8 6 seventy-five dollars.

8 7 9. For a food establishment or food processing plant with  
8 8 annual gross sales of two hundred fifty thousand dollars or  
8 9 more but less than seven hundred fifty thousand dollars, two  
8 10 hundred twenty-five dollars.

8 11 10. For a food establishment or food processing plant with  
8 12 annual gross sales of seven hundred fifty thousand dollars or

8 13 more but less than one million two hundred fifty thousand  
8 14 dollars, two hundred seventy-five dollars.

8 15 11. For a food establishment or food processing plant with  
8 16 annual gross sales of one million two hundred fifty thousand  
8 17 dollars or more, three hundred seventy-five dollars.

8 18 Fees collected by the department shall be deposited in the  
8 19 general fund of the state. Fees collected by a municipal  
8 20 corporation shall be retained by the municipal corporation for  
8 21 regulation of establishments licensed under this chapter,  
8 22 except for an administrative fee of not more than ten percent  
8 23 of the license fee as provided by rule of the department  
8 24 adopted pursuant to chapter 17A. The administrative fee for a  
8 25 fiscal year shall be forwarded to the department for credit to  
8 26 the general fund of the state no later than June 10 of that  
8 27 fiscal year.

8 28 Each vending machine licensed under this chapter shall bear  
8 29 a readily visible identification tag or decal provided by the  
8 30 licensee, containing the licensee's business address and phone  
8 31 number, and a company permit number assigned by the regulatory  
8 32 authority.

8 33 Sec. 7. NEW SECTION. 137F.7 SUSPENSION OR REVOCATION OF  
8 34 LICENSES.

8 35 The regulatory authority may suspend or revoke a license  
9 1 issued to a person under this chapter if any of the following  
9 2 occurs:

9 3 1. The person's food establishment or food processing  
9 4 plant does not conform to a provision of this chapter or a  
9 5 rule adopted pursuant to this chapter.

9 6 2. The person conducts an activity constituting a criminal  
9 7 offense in the food establishment or food processing plant and  
9 8 is convicted of a serious misdemeanor or a more serious  
9 9 offense as a result.

9 10 A licensee may appeal a suspension or revocation in  
9 11 accordance with rules adopted by the department.

9 12 Sec. 8. NEW SECTION. 137F.8 FARMERS MARKETS.

9 13 A vendor who offers a product for sale at a farmers market  
9 14 shall have the sole responsibility to obtain and maintain any  
9 15 license required to sell or distribute the product.

9 16 Sec. 9. NEW SECTION. 137F.9 OPERATION WITHOUT INSPECTION  
9 17 AND LICENSE PROHIBITED.

9 18 A person shall not open or operate a food establishment or  
9 19 food processing plant until an inspection has been made and a  
9 20 license has been issued by the regulatory authority.  
9 21 Inspections shall be conducted according to the standards of  
9 22 this chapter.

9 23 A person who opens or operates a food establishment or food  
9 24 processing plant without a license is subject to a penalty of  
9 25 up to twice the amount of the license fee.

9 26 Sec. 10. NEW SECTION. 137F.10 REGULAR INSPECTIONS.

9 27 The regulatory authority shall provide for the inspection  
9 28 of each food establishment and food processing plant in the  
9 29 state in accordance with this chapter and with rules adopted  
9 30 pursuant to this chapter in accordance with chapter 17A. A  
9 31 regulatory authority may enter a food establishment or food  
9 32 processing plant at any reasonable hour to conduct an  
9 33 inspection. The manager of the food establishment or food  
9 34 processing plant shall afford free access to every part of the  
9 35 premises and render all aid and assistance necessary to enable  
10 1 the regulatory authority to make a thorough and complete  
10 2 inspection.

10 3 Sec. 11. NEW SECTION. 137F.11 INSPECTION UPON COMPLAINT.

10 4 Upon receipt of a complaint by a customer of a food  
10 5 establishment or food processing plant stating facts  
10 6 indicating the premises is in an insanitary condition, the  
10 7 regulatory authority may conduct an investigation.

10 8 Sec. 12. NEW SECTION. 137F.12 PLUMBING.

10 9 A food establishment or food processing plant shall have an

10 10 adequately designed plumbing system conforming to at least the  
10 11 minimum requirements of the state plumbing code. The plumbing  
10 12 system shall have a connection to a municipal water and  
10 13 sewerage system or to a benefited water district or sanitary  
10 14 sewerage district if such facilities are available.

10 15 Sec. 13. NEW SECTION. 137F.13 WATER AND WASTE TREATMENT.

10 16 If a food establishment or food processing plant is served  
10 17 by privately owned water or waste treatment facilities, these  
10 18 facilities shall meet the technical requirements of the local  
10 19 board of health and the department of natural resources.

10 20 Sec. 14. NEW SECTION. 137F.14 TOILETS AND LAVATORIES.

10 21 A food establishment or food processing plant shall provide  
10 22 toilet and lavatory facilities in accordance with rules  
10 23 adopted pursuant to this chapter.

10 24 Sec. 15. NEW SECTION. 137F.15 FIRE SAFETY.

10 25 Violation of a fire safety rule adopted pursuant to section  
10 26 100.35 and applicable to food establishments or food  
10 27 processing plants occurring on the premises of a food  
10 28 establishment or food processing plant is a violation of this  
10 29 chapter.

10 30 Sec. 16. NEW SECTION. 137F.16 CONFLICTS WITH STATE  
10 31 BUILDING CODE.

10 32 Provisions of this chapter in conflict with the state  
10 33 building code shall not apply where the state building code  
10 34 has been adopted or when the state building code applies  
10 35 throughout the state.

11 1 Sec. 17. NEW SECTION. 137F.17 PENALTY.

11 2 A person who violates this chapter or rules adopted  
11 3 pursuant to this chapter is guilty of a simple misdemeanor.

11 4 Sec. 18. NEW SECTION. 137F.18 INJUNCTION.

11 5 A person opening or operating a food establishment or food  
11 6 processing plant in violation of this chapter may be  
11 7 restrained by injunction from further operating that  
11 8 establishment or plant. If an imminent health hazard exists,  
11 9 the establishment or plant must cease operation. Operation  
11 10 shall not be resumed until authorized by the regulatory  
11 11 authority.

11 12 Sec. 19. NEW SECTION. 137F.19 DUTY OF COUNTY OR CITY  
11 13 ATTORNEY. The county attorney in each county or city attorney  
11 14 in each city shall assist in the enforcement of this chapter.

11 15 Sec. 20. Section [10A.104](#), subsection 9, Code 1995, is  
11 16 amended to read as follows:

11 17 9. Administer and enforce this chapter, and chapters 99B,  
11 18 135B, 135C,

~~137A, 137B,~~

~~137C, and 137D~~

~~, and 137E~~

11 19 Sec. 21. Section 100.35, unnumbered paragraph 1, Code  
11 20 1995, is amended to read as follows:

11 21 The fire marshal shall adopt, and may amend rules under  
11 22 chapter 17A, which include standards relating to exits and  
11 23 exit lights, fire escapes, fire protection, fire safety and  
11 24 the elimination of fire hazards, in and for churches, schools,  
11 25 hotels, theaters, amphitheaters, hospitals, health care  
11 26 facilities as defined in section 135C.1, boarding homes or  
11 27 housing, rest homes, dormitories, college buildings, lodge  
11 28 halls, club rooms, public meeting places, places of amusement,  
11 29 apartment buildings, food establishments as defined in section  
11 30

~~137A.1, subsection 5, food service establishments as defined~~

~~in section 137B.2, subsection 6~~

~~137F.1, and all other~~

11 32 buildings or structures in which persons congregate from time  
11 33 to time, whether publicly or privately owned. Violation of a  
11 34 rule adopted by the fire marshal is a simple misdemeanor.  
11 35 However, upon proof that the fire marshal gave written notice  
12 1 to the defendant of the violation, and proof that the  
12 2 violation constituted a clear and present danger to life, and  
12 3 proof that the defendant failed to eliminate the condition  
12 4 giving rise to the violation within thirty days after receipt  
12 5 of notice from the fire marshal, the penalty is that provided  
12 6 by law for a serious misdemeanor. Each day of the continuing  
12 7 violation of a rule after conviction of a violation of the  
12 8 rule is a separate offense. A conviction is subject to appeal  
12 9 as in other criminal cases.

12 10 Sec. 22. Section 137C.6, unnumbered paragraph 2, Code  
12 11 1995, is amended to read as follows:

12 12 If a municipal corporation wants its local board of health  
12 13 to license, inspect, and otherwise enforce the Iowa hotel  
12 14 sanitation code within its jurisdiction, the municipal  
12 15 corporation may enter into an agreement to do so with the  
12 16 director. The director may enter into the agreement if the  
12 17 director finds that the local board of health has adequate  
12 18 resources to perform the required functions. A municipal  
12 19 corporation may only enter into an agreement to enforce the  
12 20 Iowa hotel sanitation code if it also agrees to enforce the  
12 21 Iowa food

~~service sanitation~~

~~code pursuant to section~~

~~137B.6~~

12 22

~~and the food and beverage vending machine laws pursuant to~~

12 23

~~section 137E.3~~

~~137F.3.~~

12 24 Sec. 23. Section 137C.35, unnumbered paragraph 1, Code  
12 25 1995, is amended to read as follows:

12 26 This chapter does not apply to bed and breakfast homes as  
12 27 defined in section

~~137B.2~~

~~137F.1. However, a bed and~~

12 28 breakfast home shall have a smoke detector in proper working  
12 29 order in each sleeping room and a fire extinguisher in proper  
12 30 working order on each floor. A bed and breakfast home which  
12 31 does not receive its drinking water from a public water  
12 32 supply, shall have its drinking water tested at least annually  
12 33 by the state hygienic laboratory or the local board of health.  
12 34 A violation of this section is punishable as provided in  
12 35 section 137C.28.

13 1 Sec. 24. Section [172A.6](#), Code 1995, is amended to read as  
13 2 follows:

13 3 [172A.6](#) LOW VOLUME DEALERS EXEMPT FROM LICENSE AND BOND.

13 4 The license and financial responsibility provisions of this  
13 5 chapter shall not apply to any person who is licensed by the  
13 6 secretary as provided in chapter

~~137A~~

~~137F, 171, or 172 and~~

13 7 who purchases livestock for slaughter valued at less than an  
13 8 average daily value of two thousand five hundred dollars

13 9 during the preceding twelve months or such part thereof as the  
13 10 person was purchasing livestock. Said licensees are made  
13 11 subject to this chapter as to the regulatory and penal  
13 12 provisions hereof. All other provisions of this chapter shall  
13 13 apply to said dealers or brokers.  
13 14 Sec. 25. Section 189A.3, unnumbered paragraph 1, Code  
13 15 1995, is amended to read as follows:  
13 16 No person shall operate an establishment other than a  
13 17 grocery store or food

~~service~~

- establishment as defined in  
13 18 section

~~137B.2~~

- ~~137E.1~~ without first obtaining a license from  
13 19 the department. The license fee for each establishment per  
13 20 year or any part of a year shall be:  
13 21 Sec. 26. Section [196.8](#), Code 1995, is amended to read as  
13 22 follows:  
13 23 196.8 QUALITY.  
13 24 All eggs offered for sale to an establishment must be no  
13 25 lower than United States department of agriculture consumer  
13 26 grade "B". Retailers selling eggs at retail must hold eggs at  
13 27 a temperature not to exceed

~~sixty~~

- ~~forty-one~~ degrees Fahrenheit  
13 28 or

~~sixteen~~

- ~~five~~ degrees Celsius.  
13 29 Sec. 27. Section [331.382](#), subsections 4 and 5, Code 1995,  
13 30 are amended to read as follows:  
13 31 4. The power to establish a county hospital is subject to  
13 32 the licensing requirements of chapter

~~135B~~

- ~~137F~~ and the power  
13 33 to establish a county health care facility is subject to the  
13 34 licensing requirements of chapter 135C.  
13 35 5. The board shall not regulate, license, inspect, or  
14 1 collect license fees from food

~~service~~

- establishments ~~or food~~  
14 2 ~~and beverage vending machines~~ except as provided in chapter  
14 3

~~137B~~

- ~~137F~~ or from hotels except as provided in chapter 137C

~~or~~

-  
14 4

~~for food and beverage vending machines except as provided in~~

-  
14 5

~~section 137E.3~~

-  
14 6 Sec. 28. Section [331.756](#), subsection 32, Code 1995, is  
14 7 amended to read as follows:  
14 8 32. Assist the department of inspections and appeals in  
14 9 the enforcement of

~~the food establishment laws,~~

- the Iowa food

14 10

~~service sanitation~~

- code

- and the Iowa hotel sanitation code as

14 11 provided in sections

~~137A.26, 137B.21,~~

- 137F.19 and 137C.30.

14 12 Sec. 29. Section [453A.36](#), subsection 6, Code 1995, is

14 13 amended to read as follows:

14 14 6. Any sales of cigarettes or tobacco products made  
14 15 through a cigarette vending machine are subject to rules and  
14 16 penalties relative to retail sales of cigarettes and tobacco  
14 17 products provided for in this chapter. No cigarettes shall be  
14 18 sold through any cigarette vending machine unless the  
14 19 cigarettes have been properly stamped or metered as provided  
14 20 by this division, and in case of violation of this provision,  
14 21 the permit of the dealer authorizing retail sales of  
14 22 cigarettes shall be canceled. Payment of the license fee as  
14 23 provided in section 453A.13 authorizes a cigarette vendor to  
14 24 sell cigarettes or tobacco products through vending machines,  
14 25 provided that the following conditions are met: the machines  
14 26 are located in places where the machines are under the  
14 27 supervision of a person of legal age who is responsible for  
14 28 prevention of purchase by minors from the machines; the  
14 29 machines are equipped with a lock-out device under the control  
14 30 of a person of legal age who shall directly regulate the sale  
14 31 of items through the machines, and which shall include a  
14 32 mechanism to prevent the machines from functioning if the  
14 33 power source for the lock-out device fails or if the lock-out  
14 34 device is disabled, and a mechanism to ensure that only one  
14 35 pack of cigarettes or one tobacco product is dispensed at a  
15 1 time; and the location where the machines are placed is  
15 2 covered by a local retail permit. However, a lock-out device  
15 3 is not required for machines operated in the following  
15 4 locations, if the machines are not to be placed in a doorway  
15 5 or other area readily accessible to minors: a commercial  
15 6 establishment holding a class "C" liquor license or a class  
15 7 "B" beer permit under chapter 123, if the establishment is not  
15 8 also licensed as a food service establishment under chapter  
15 9

~~137B~~

- 137F; a private facility not open to the public; or a

15 10 workplace not open to the public. This section does not  
15 11 require a retail licensee to buy a cigarette vendor's permit  
15 12 if the retail licensee is in fact the owner of the cigarette  
15 13 vending machines and the machines are operated in the location  
15 14 described in the retail permit.

15 15 Sec. 30. Section [523H.6](#), subsection 1, Code 1995, is

15 16 amended to read as follows:

15 17 1. Notwithstanding the terms, provisions, or conditions of  
15 18 an agreement or franchise, if a franchisor seeks to establish  
15 19 a new outlet, company-owned store, or carry-out store within  
15 20 an unreasonable proximity of an existing franchisee, the  
15 21 existing franchisee, at the option of the franchisor, shall  
15 22 have either a right of first refusal with respect to the  
15 23 proposed new outlet, company-owned store, or carry-out store  
15 24 or a right to compensation for market share diverted by the  
15 25 new outlet. For the purposes of this section, "unreasonable  
15 26 proximity" as applied to a food establishment franchisor

~~or~~

15 27

~~food service establishment franchisor~~

-, including outlets and  
15 28 carry-out stores.

~~as~~

- with food establishments defined by  
15 29 section

~~137A.1~~

- 137F.1, subsection

~~5~~

- 8,

~~and section 137B.2,~~

15 30

~~subsection 6,~~

- includes but is not limited to the shortest

15 31 distance as measured by the following methods:

15 32 Sec. 31. Chapters 137A, 137B, and 137E, Code 1995, are  
15 33 repealed.

15 34 Sec. 32. EFFECTIVE DATE AND TRANSITION.

15 35 1. This Act takes effect January 1, 1996.

16 1 2. A license issued pursuant to chapter 137A, 137B, or  
16 2 137E before the effective date of this Act shall remain valid  
16 3 and be deemed the same as a license issued pursuant to chapter  
16 4 137F for the remaining term of the license.

16 5 3. An establishment with a license under both chapters  
16 6 137A and 137B on the effective date of this Act shall not be  
16 7 issued a license under chapter 137F until both licenses have  
16 8 expired.

16 9

#### EXPLANATION

16 10 This bill repeals chapters 137A, 137B, and 137E effective  
16 11 January 1, 1996. The new chapter which replaces these three  
16 12 chapters reflects the adoption on the federal level of the  
16 13 1993 model food code. The separate chapters governing food  
16 14 establishments, the food service sanitation code, and food and  
16 15 beverage vending machines are combined into one chapter.

16 16 Section 6 provides for an increase in fees charged for  
16 17 licensing vending machines and food service establishments, as  
16 18 well as a 10 percent administrative fee charged to  
16 19 municipalities that regulate food establishments.

16 20 Sections 20 through 30 amend other Code sections containing  
16 21 internal references to the repealed chapters.

16 22 The bill also establishes a transition between licenses  
16 23 issued under the repealed chapters and chapter 137F.

16 24

#### BACKGROUND STATEMENT

16 25

#### SUBMITTED BY THE AGENCY

16 26 This proposed legislation repeals Iowa Code chapters 137A,  
16 27 food establishments; 137B, food service sanitation code; and  
16 28 137E, vending machines; and creates a new chapter 137F.

16 29 The legislation would, under chapter 137F:

16 30 1. adopt the United States food and drug administration  
16 31 model food code,

16 32 2. adjust license fees to accommodate costs of regulation.

16 33 Most of the legislation relates to the adoption of the 1993  
16 34 model food code. The United States food and drug  
16 35 administration has developed one set of standards to cover the  
17 1 establishments previously covered by individual codes. The  
17 2 state has previously adopted these individual federal codes.  
17 3 The adoption of this code would provide a more uniform system

17 4 of regulation to assure that food at retail is safe and  
17 5 properly protected and presented. The provisions of the model  
17 6 food code provide a system of prevention and overlapping  
17 7 safeguards designed to:

- 17 8 1. minimize foodborne illness;
- 17 9 2. assure employee health, industry food protection  
17 10 manager knowledge, safe food, nontoxic and cleanable  
17 11 equipment, and acceptable levels of sanitation on food  
17 12 establishment premises; and
- 17 13 3. promote fair dealings with the consumer.

17 14 Section 6 provides for the license fees of establishments  
17 15 covered under chapter 137F. License fees were last increased  
17 16 in 1978. The consumer price index has increased by over 65  
17 17 percent since 1978. In order to have the license fees more  
17 18 adequately meet the costs of regulation, an increase in the  
17 19 fees is being requested.

17 20 In addition, the department is proposing to charge an  
17 21 administrative fee of up to 10 percent to contracting  
17 22 municipal corporations. The department provides various  
17 23 management and support services to the contracting municipal  
17 24 corporations. The administrative fee would be based on the  
17 25 services provided.

17 26 The legislation would become effective January 1, 1996.  
17 27 The language also provides for a transition between the  
17 28 current licenses and the new licenses under chapter 137F.

17 29 LSB 1185DP 76  
17 30 cl/jj/8.1