

4-29-97 Referred to W. & Means Comm.

MAR 6 1997
WAYS & MEANS CALENDAR

HOUSE FILE 504
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 138)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to regulation of food establishments and
2 providing for fees and penalties and providing an effective
3 date.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 504

1 Section 1. Section 10A.104, subsection 9, Code 1997, is
2 amended to read as follows:

3 9. Administer and enforce this chapter, and chapters 99B,
4 135B, 135C, ~~135G, 135H, 135J, 137A, 137B,~~ 137C, 137D, and ~~137E~~
5 137F.

6 Sec. 2. Section 100.35, unnumbered paragraph 1, Code 1997,
7 is amended to read as follows:

8 The fire marshal shall adopt, and may amend rules under
9 chapter 17A, which include standards relating to exits and
10 exit lights, fire escapes, fire protection, fire safety and
11 the elimination of fire hazards, in and for churches, schools,
12 hotels, theaters, amphitheatres, hospitals, health care
13 facilities as defined in section 135C.1, boarding homes or
14 housing, rest homes, dormitories, college buildings, lodge
15 halls, club rooms, public meeting places, places of amusement,
16 apartment buildings, food establishments and food processing
17 plants as defined in section ~~137A:1-subsection-5, food~~
18 ~~service-establishments-as-defined-in-section-137B:2,~~
19 ~~subsection-6~~ 137F.1, and all other buildings or structures in
20 which persons congregate from time to time, whether publicly
21 or privately owned. Violation of a rule adopted by the fire
22 marshal is a simple misdemeanor. However, upon proof that the
23 fire marshal gave written notice to the defendant of the
24 violation, and proof that the violation constituted a clear
25 and present danger to life, and proof that the defendant
26 failed to eliminate the condition giving rise to the violation
27 within thirty days after receipt of notice from the fire
28 marshal, the penalty is that provided by law for a serious
29 misdemeanor. Each day of the continuing violation of a rule
30 after conviction of a violation of the rule is a separate
31 offense. A conviction is subject to appeal as in other
32 criminal cases.

33 Sec. 3. Section 137C.6, unnumbered paragraph 2, Code 1997,
34 is amended to read as follows:

35 If a municipal corporation wants its local board of health

1 to license, inspect, and otherwise enforce the Iowa hotel
2 sanitation code within its jurisdiction, the municipal
3 corporation may enter into an agreement to do so with the
4 director. The director may enter into the agreement if the
5 director finds that the local board of health has adequate
6 resources to perform the required functions. A municipal
7 corporation may only enter into an agreement to enforce the
8 Iowa hotel sanitation code if it also agrees to enforce the
9 Iowa food ~~service-sanitation~~ code pursuant to section ~~137B-6~~
10 ~~and-the-food-and-beverage-vending-machine-laws-pursuant-to~~
11 ~~section-137E-3~~ 137F.3.

12 Sec. 4. Section 137C.35, unnumbered paragraph 1, Code
13 1997, is amended to read as follows:

14 This chapter does not apply to bed and breakfast homes as
15 defined in section ~~137B-2~~ 137F.1. However, a bed and
16 breakfast home shall have a smoke detector in proper working
17 order in each sleeping room and a fire extinguisher in proper
18 working order on each floor. A bed and breakfast home which
19 does not receive its drinking water from a public water
20 supply, shall have its drinking water tested at least annually
21 by the state hygienic laboratory or the local board of health.
22 A violation of this section is punishable as provided in
23 section 137C.28.

24 Sec. 5. NEW SECTION. 137F.1 DEFINITIONS.

25 For the purpose of this chapter:

26 1. "Bed and breakfast home" means a private residence
27 which provides lodging and meals for guests, in which the host
28 or hostess resides and in which no more than two guest
29 families are lodged at the same time and which, while it may
30 advertise and accept reservations, does not hold itself out to
31 the public to be a restaurant, hotel, or motel, does not
32 require reservations, and serves food only to overnight
33 guests.

34 2. "Commissary" means a food establishment used for
35 preparing, fabricating, packaging, and storage of food or food

1 products for distribution and sale through the food

2 establishment's own food establishment outlets.

3 3. "Department" means the department of inspections and
4 appeals.

5 4. "Director" means the director of the department of
6 inspections and appeals.

7 5. "Farmers market" means a marketplace which seasonally
8 operates principally as a common market for fresh fruits and
9 vegetables on a retail basis for off-the-premises consumption.

10 6. "Food" means a raw, cooked, or processed edible
11 substance, ice, a beverage, an ingredient used or intended for
12 use or sale in whole or in part for human consumption, or
13 chewing gum.

14 7. "Food code" means the 1995 edition of the United States
15 food and drug administration food code.

16 8. "Food establishment" means an operation that stores,
17 prepares, packages, serves, vends, or otherwise provides food
18 for human consumption and includes a food service operation in
19 a school, summer camp, residential service substance abuse
20 treatment facility, halfway house substance abuse treatment
21 facility, correctional facility operated by the department of
22 corrections, the state training school, or the Iowa juvenile
23 home. "Food establishment" does not include the following:

24 a. A food processing plant.

25 b. An establishment that offers only prepackaged foods
26 that are nonpotentially hazardous.

27 c. A produce stand or facility which sells only whole,
28 uncut fresh fruits and vegetables.

29 d. Premises which are licensed as a home food
30 establishment pursuant to chapter 137D.

31 e. Premises which operate as a farmers market.

32 f. Premises of a residence in which food that is
33 nonpotentially hazardous is sold for consumption off-the-
34 premises, if the food is labeled to identify the name and
35 address of the person preparing the food and the common name

1 of the food. As used in this subsection, food that is
2 nonpotentially hazardous means only the following:

3 (1) Baked goods, except the following: soft pies, bakery
4 products with custard or cream fillings, or any other
5 potentially hazardous goods.

6 (2) Wholesome, fresh eggs that are kept at a temperature
7 of forty-one degrees Fahrenheit or five degrees Celsius or
8 less.

9 (3) Honey which is labeled with additional information as
10 provided by departmental rule.

11 g. A kitchen in a private home, if only food that is
12 nonpotentially hazardous is prepared for sale or service at a
13 function such as a religious or charitable organization's bake
14 sale and if the consumer is informed by a clearly visible
15 placard at the sales or service location that the food is
16 prepared in a kitchen that is not subject to regulation and
17 inspection by the regulatory authority or in an area where
18 food that is prepared as specified above is sold or offered
19 for human consumption.

20 h. A kitchen in a private home or a bed and breakfast
21 home.

22 i. A private home that receives catered or home-delivered
23 food.

24 j. Child day care facilities and other food establishment
25 facilities located in hospitals or health care facilities
26 which are subject to inspection by other state agencies or
27 divisions of the department.

28 k. Supply vehicles, vending machine locations, or
29 boardinghouses for permanent guests.

30 l. Establishments exclusively engaged in the processing of
31 meat and poultry which are licensed pursuant to section
32 189A.3.

33 m. Premises covered by a current class "A" beer permit as
34 provided in chapter 123.

35 9. "Food processing plant" means a commercial operation

1 that manufactures, packages, labels, or stores food for human
2 consumption and does not provide food directly to a consumer.
3 "Food processing plant" does not include premises covered by a
4 class "A" beer permit as provided in chapter 123.

5 10. "Mobile food unit" means a food establishment that is
6 readily movable, which either operates up to three consecutive
7 days at one location or returns to a home base of operation at
8 the end of each day.

9 11. "Municipal corporation" means a political subdivision
10 of this state.

11 12. "Perishable food" means potentially hazardous food.

12 13. "Potentially hazardous food" means a food that is
13 natural or synthetic and is in a form capable of supporting
14 the rapid and progressive growth of infectious or toxigenic
15 microorganisms, or the growth and toxin production of
16 clostridium botulinum. "Potentially hazardous food" includes
17 an animal food that is raw or heat-treated, a food of plant
18 origin that is heat-treated or consists of raw seed sprouts,
19 cut melons, and garlic and oil mixtures. "Potentially
20 hazardous food" does not include the following:

- 21 a. An air-cooled hard-boiled egg with shell intact.
- 22 b. A food with a water activity value of 0.85 or less.
- 23 c. A food with a hydrogen ion concentration (pH) level of
24 4.6 or below when measured at twenty-four degrees Centigrade
25 or seventy-five degrees Fahrenheit.
- 26 d. A food, in an unopened hermetically sealed container,
27 that is commercially processed to achieve and maintain
28 commercial sterility under conditions of nonrefrigerated
29 storage and distribution.

30 14. "Pushcart" means a non-self-propelled vehicle food
31 establishment limited to serving nonpotentially hazardous
32 foods or commissary-wrapped foods maintained at proper
33 temperatures, or limited to the preparation and serving of
34 frankfurters.

35 15. "Regulatory authority" means the department or a

1 municipal corporation that has entered into an agreement with
2 the director pursuant to section 137F.3 for authority to
3 enforce this chapter in its jurisdiction.

4 16. "Temporary food establishment" means a food
5 establishment that operates for a period of no more than
6 fourteen consecutive days in conjunction with a single event
7 or celebration.

8 17. "Vending machine" means a food establishment which is
9 a self-service device that, upon insertion of a coin, paper
10 currency, token, card, or key, dispenses unit servings of food
11 in bulk or in packages without the necessity of replenishing
12 the device between each vending operation.

13 18. "Vending machine location" means the physical site
14 where a vending machine is installed and operated, including
15 the storage and servicing areas on the premises that are used
16 in conjunction with the vending machine.

17 Sec. 6. NEW SECTION. 137F.2 ADOPTION BY RULE.

18 The director shall adopt the food code with the following
19 exceptions:

20 1. 3-201.11(B) shall be amended to allow food licensed
21 under chapter 137D or food specified under section 137F.1,
22 subsection 8, paragraph "f", to be used or offered for sale.

23 2. A nonprofit organization which engages in the serving
24 of food not more than one day per calendar week nor two or
25 more consecutive days is exempt from this chapter.

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

31 4. A vending machine commissary shall be inspected at
32 least once each calendar year.

33 5. A vending machine which only dispenses prepackaged food
34 that is nonpotentially hazardous is exempt from inspection and
35 licensing, except upon receipt of a verified complaint by the

1 regulatory authority.

2 6. 1-201.10(B)(31); 2-102.11; 2-201.11(D); 2-
3 201.13(A)(2)(b); 2-301.13; 3-401.11(B)(2); 3-501.14(B); 4-
4 101.17(A); 5-203.11(B); 5-203.15; and 6-301.11(B) shall be
5 deleted.

6 7. 1-201.10(B)(77)(b) shall be amended to read as follows:
7 "(b) 'Single-use articles' includes items such as wax paper,
8 butcher paper, plastic wrap, formed aluminum food containers,
9 jars, bread wrappers, ketchup bottles, and number 10 cans."

10 8. 1-201.10(B)(77) shall be amended by adding the
11 following: "(c) The reuse of food grade containers that meet
12 the characteristics in section 4-101.11 is permitted."

13 9. 2-201.12(B)(2) shall be amended by adding: "Shigella
14 spp. and E. Coli 0157:H7" after the word "typhi."

15 10. 2-304.11 shall be amended to read: "Food employees
16 shall wear clean clothing to prevent contamination."

17 11. 2-403.11 shall be amended by adding the following:
18 "(C) Food employees handing edible fish in aquariums, or
19 shellfish or crustacea in display tanks shall wash their hands
20 before handling exposed food, cleaning equipment, utensils,
21 and lien, or unwrapped single-service and single-use
22 articles."

23 12. 3-201.14 shall be amended by striking all language and
24 inserting: "Fish may not be received for sale or service
25 unless they are commercially and legally caught or harvested,
26 or as approved by the regulatory authority."

27 13. 3-401.11(D) shall be amended by adding the following:
28 "(D) When ordered by the immediate consumer, whole-muscle
29 intact beef steaks, which have been seared on both sides, be
30 exempted from the minimum cooking requirements."

31 14. 3-501.14(A) shall be amended by striking the word
32 "Cooked".

33 15. 3-501.16(B) shall be amended by adding the following:
34 "Existing equipment in establishments licensed as of July 1,
35 1997, which cannot maintain a minimum temperature of forty-one

1 degrees Fahrenheit or five degrees Celsius shall be allowed to
2 maintain potentially hazardous food for up to a total of three
3 days at forty-five degrees Fahrenheit or seven degrees Celsius
4 and further that existing equipment will be upgraded to meet
5 the forty-one degrees Fahrenheit or five degrees Celsius
6 requirement or replaced within five years."

7 16. 3-501.18(A) shall be amended by adding: "or if
8 maintained at forty-five degrees Fahrenheit or seven degrees
9 Celsius, shall be discarded after three days for ready-to-eat
10 potentially hazardous foods".

11 17. 3-603.11 shall be amended by adding: "The following
12 standardized language shall be used on the required consumer
13 advisory: 'Thoroughly cooking foods of animal origin such as
14 beef, eggs, fish, lamb, pork, poultry, or shellfish reduces
15 the risk of food-borne illness. Individuals with certain
16 health conditions may be at higher risk if these foods are
17 consumed raw or undercooked. Consult your physician or public
18 health official for further information.'"

19 18. 5-302.16 shall be amended by adding: "Such hoses
20 shall also fully comply with subsection 4-101.11."

21 19. 6-501.111(B)(3) shall be amended by striking the word
22 "extermination" and inserting in lieu thereof the words "pest
23 control".

24 Sec. 7. NEW SECTION. 137F.3 AUTHORITY TO ENFORCE.

25 The director shall regulate, license, and inspect food
26 establishments and food processing plants and enforce this
27 chapter pursuant to rules adopted by the department in
28 accordance with chapter 17A. Municipal corporations shall not
29 regulate, license, inspect, or collect license fees from food
30 establishments and food processing plants, except as provided
31 in this section.

32 A municipal corporation may enter into an agreement with
33 the director to provide that the municipal corporation shall
34 license, inspect, and otherwise enforce this chapter within
35 its jurisdiction. The director may enter into the agreement

1 if the director finds that the municipal corporation has
2 adequate resources to perform the required functions.
3 However, the department shall license and inspect all food
4 processing plants which manufacture, package, or label food
5 products. A municipal corporation may license and inspect, as
6 authorized by this section, food processing plants whose
7 operations are limited to the storage of food products.

8 If the director enters into an agreement with a municipal
9 corporation as provided by this section, the director shall
10 provide that the inspection practices of a municipal
11 corporation are spot-checked on a regular basis.

12 A municipal corporation that is responsible for enforcing
13 this chapter within its jurisdiction pursuant to an agreement
14 shall make an annual report to the director providing the
15 following information:

16 1. The total number of licenses granted or renewed by the
17 municipal corporation under this chapter during the year.

18 2. The number of licenses granted or renewed by the
19 municipal corporation under this chapter during the year in
20 each of the following categories:

- 21 a. Food establishments.
- 22 b. Food processing plants.
- 23 c. Mobile food units and pushcarts.
- 24 d. Temporary food establishments.
- 25 e. Vending machines.

26 3. The amount of money collected in license fees during
27 the year.

28 4. Other information the director requests.

29 The director shall monitor municipal corporations which
30 have entered into an agreement pursuant to this section to
31 determine if they are enforcing this chapter within their
32 respective jurisdictions. If the director determines that
33 this chapter is not enforced by a municipal corporation, the
34 director may rescind the agreement after reasonable notice and
35 an opportunity for a hearing. If the agreement is rescinded,

1 the director shall assume responsibility for enforcement in
2 the jurisdiction involved.

3 Sec. 8. NEW SECTION. 137F.4 LICENSE REQUIRED.

4 A person shall not open or operate a food establishment or
5 food processing plant until the appropriate license has been
6 obtained from the regulatory authority. Sale of products at
7 wholesale to outlets not owned by a commissary owner requires
8 a food processing plant license. A license shall expire one
9 year from the date of issue. A license is renewable. All
10 licenses issued under this chapter that are not renewed by the
11 licensee on or before the expiration date shall be subject to
12 a penalty of ten percent per month of the license fee if the
13 license is renewed at a later date.

14 Sec. 9. NEW SECTION. 137F.5 APPLICATION FOR LICENSE.

15 An application form prescribed by the department for a
16 license under this chapter shall be obtained from the
17 department or from a municipal corporation which is a
18 regulatory authority. A completed application shall be
19 submitted to the appropriate regulatory authority.

20 The dominant form of business shall determine the type of
21 license for establishments which engage in operations covered
22 under both the definition of a food establishment and of a
23 food processing plant.

24 The regulatory authority where the unit is domiciled shall
25 issue a license for a mobile food unit.

26 An application for renewal of a license shall be made at
27 least thirty days before the expiration of the existing
28 license.

29 Sec. 10. NEW SECTION. 137F.6 LICENSE FEES.

30 The regulatory authority shall collect the following annual
31 license fees:

32 1. For a mobile food unit or pushcart, seventy-five
33 dollars.

34 2. For a temporary food establishment per fixed location,
35 twenty-five dollars.

- 1 3. For a vending machine, twenty dollars for the first
2 machine and five dollars for each additional machine.
- 3 4. For a food establishment or a section of a food
4 establishment, which prepares or serves food for individual
5 portion service, the annual license fee shall correspond to
6 the annual gross sales of the food establishment, as follows:
- 7 a. Annual gross sales of under fifty thousand dollars,
8 sixty dollars.
- 9 b. Annual gross sales of at least fifty thousand dollars
10 but less than one hundred thousand dollars, one hundred
11 dollars.
- 12 c. Annual gross sales of at least one hundred thousand
13 dollars but less than two hundred fifty thousand dollars, two
14 hundred dollars.
- 15 d. Annual gross sales of two hundred fifty thousand
16 dollars or more, two hundred twenty-five dollars.
- 17 5. For a food establishment or section of a food
18 establishment, which sells food or food products to consumer
19 customers intended for preparation or consumption off-the-
20 premises, the annual license fee shall correspond to the
21 annual gross sales of the food establishment, as follows:
- 22 a. Annual gross sales of under ten thousand dollars,
23 thirty dollars.
- 24 b. Annual gross sales of at least ten thousand dollars but
25 less than two hundred fifty thousand dollars, seventy-five
26 dollars.
- 27 c. Annual gross sales of at least two hundred fifty
28 thousand dollars but less than five hundred thousand dollars,
29 one hundred fifteen dollars.
- 30 d. Annual gross sales of at least five hundred thousand
31 dollars but less than seven hundred fifty thousand dollars,
32 one hundred fifty dollars.
- 33 e. Annual gross sales of seven hundred fifty thousand
34 dollars or more, two hundred twenty-five dollars.
- 35 6. For a food processing plant, the annual license fee

1 shall correspond to the annual gross sales of the food
2 processing plant, as follows:

3 a. Annual gross sales of under fifty thousand dollars,
4 fifty dollars.

5 b. Annual gross sales of at least fifty thousand dollars
6 but less than two hundred fifty thousand dollars, one hundred
7 dollars.

8 c. Annual gross sales of at least two hundred fifty
9 thousand dollars but less than five hundred thousand dollars,
10 one hundred fifty dollars.

11 d. Annual gross sales of five hundred thousand dollars or
12 more, two hundred fifty dollars.

13 A food establishment covered by subsections 4 and 5 shall
14 be assessed license fees under both subsections.

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

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

31 Sec. 11. NEW SECTION. 137F.7 SUSPENSION OR REVOCATION OF
32 LICENSES.

33 The regulatory authority may suspend or revoke a license
34 issued to a person under this chapter pursuant to rules
35 adopted by the department if any of the following occurs:

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

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

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

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

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

14 Sec. 13. NEW SECTION. 137F.9 OPERATION WITHOUT
15 INSPECTION PROHIBITED.

16 A person shall not open or operate a food establishment or
17 food processing plant until an inspection has been made and a
18 license has been issued by the regulatory authority.
19 Inspections shall be conducted according to standards adopted
20 by rule of the department pursuant to chapter 17A.

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

24 Sec. 14. NEW SECTION. 137F.10 REGULAR INSPECTIONS.

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

1 Sec. 15. NEW SECTION. 137F.11 INSPECTION UPON COMPLAINT.

2 Upon receipt of a complaint by a customer of a food
3 establishment or food processing plant stating facts
4 indicating the premises are in an unsanitary condition, the
5 regulatory authority may conduct an inspection.

6 Sec. 16. NEW SECTION. 137F.12 PLUMBING.

7 A food establishment or food processing plant shall have an
8 adequately designed plumbing system conforming to at least the
9 minimum requirements of the state plumbing code, or local
10 plumbing code, whichever is more stringent. The plumbing
11 system shall have a connection to a municipal water and sewer
12 system or to a benefited water district or sanitary district
13 if such facilities are available.

14 Sec. 17. NEW SECTION. 137F.13 WATER AND WASTE TREATMENT.

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

19 Sec. 18. NEW SECTION. 137F.14 TOILETS AND LAVATORIES.

20 A food establishment or food processing plant shall provide
21 toilet and lavatory facilities in accordance with rules
22 adopted by the department pursuant to this chapter in
23 accordance with chapter 17A.

24 Sec. 19. NEW SECTION. 137F.15 FIRE SAFETY.

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

30 Sec. 20. NEW SECTION. 137F.16 CONFLICTS WITH STATE
31 BUILDING CODE.

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

1 Sec. 21. NEW SECTION. 137F.17 PENALTY.

2 A person who violates this chapter or rules adopted
3 pursuant to this chapter commits a simple misdemeanor.

4 Sec. 22. NEW SECTION. 137F.18 INJUNCTION.

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

11 Sec. 23. NEW SECTION. 137F.19 DUTY OF COUNTY OR CITY
12 ATTORNEY.

13 The county attorney in each county or city attorney in each
14 city shall assist in the enforcement of this chapter.

15 Sec. 24. Section 172A.6, unnumbered paragraph 1, Code
16 1997, is amended to read as follows:

17 The license and financial responsibility provisions of this
18 chapter shall not apply to any person who is licensed by the
19 secretary as provided in chapter ~~137A~~ 137F, 171, or 172 and
20 who purchases livestock for slaughter valued at less than an
21 average daily value of two thousand five hundred dollars
22 during the preceding twelve months or such part thereof as the
23 person was purchasing livestock. Said licensees are made
24 subject to this chapter as to the regulatory and penal
25 provisions hereof. All other provisions of this chapter shall
26 apply to said dealers or brokers.

27 Sec. 25. Section 189A.3, unnumbered paragraph 1, Code
28 1997, is amended to read as follows:

29 No person shall operate an establishment other than a
30 grocery store or food service establishment as defined in
31 section ~~137B-2~~ 137F.1 without first obtaining a license from
32 the department. The license fee for each establishment per
33 year or any part of a year shall be:

34 Sec. 26. Section 331.382, subsection 5, Code 1997, is
35 amended to read as follows:

1 5. The board shall not regulate, license, inspect, or
2 collect license fees from food service establishments or food
3 and beverage vending machines except as provided in chapter
4 ~~137B~~ 137F or from hotels except as provided in chapter 137C or
5 ~~for-food-and-beverage-vending-machines-except-as-provided-in~~
6 ~~section-137E-3.~~

7 Sec. 27. Section 331.756, subsection 32, Code 1997, is
8 amended to read as follows:

9 32. Assist the department of inspections and appeals in
10 the enforcement of ~~the-food-establishment-laws,~~ the Iowa food
11 ~~service-sanitation~~ code, and the Iowa hotel sanitation code as
12 provided in sections ~~137A-26,~~ ~~137B-21,~~ 137F.19 and 137C.30.

13 Sec. 28. Section 453A.36, subsection 6, Code 1997, is
14 amended to read as follows:

15 6. Any sales of cigarettes or tobacco products made
16 through a cigarette vending machine are subject to rules and
17 penalties relative to retail sales of cigarettes and tobacco
18 products provided for in this chapter. No cigarettes shall be
19 sold through any cigarette vending machine unless the
20 cigarettes have been properly stamped or metered as provided
21 by this division, and in case of violation of this provision,
22 the permit of the dealer authorizing retail sales of
23 cigarettes shall be canceled. Payment of the license fee as
24 provided in section 453A.13 authorizes a cigarette vendor to
25 sell cigarettes or tobacco products through vending machines,
26 provided that the following conditions are met: the machines
27 are located in places where the machines are under the
28 supervision of a person of legal age who is responsible for
29 prevention of purchase by minors from the machines; the
30 machines are equipped with a lock-out device under the control
31 of a person of legal age who shall directly regulate the sale
32 of items through the machines, and which shall include a
33 mechanism to prevent the machines from functioning if the
34 power source for the lock-out device fails or if the lock-out
35 device is disabled, and a mechanism to ensure that only one

1 pack of cigarettes or one tobacco product is dispensed at a
2 time; and the location where the machines are placed is
3 covered by a local retail permit. However, a lock-out device
4 is not required for machines operated in the following
5 locations, if the machines are not to be placed in a doorway
6 or other area readily accessible to minors: a commercial
7 establishment holding a class "C" liquor license or a class
8 "B" beer permit under chapter 123, if the establishment is not
9 also licensed as a food service establishment under chapter
10 ~~137B~~ 137F; a private facility not open to the public; or a
11 workplace not open to the public. This section does not
12 require a retail licensee to buy a cigarette vendor's permit
13 if the retail licensee is in fact the owner of the cigarette
14 vending machines and the machines are operated in the location
15 described in the retail permit.

16 Sec. 29. Chapters 137A, 137B, and 137E, Code 1997, are
17 repealed.

18 Sec. 30. EFFECTIVE DATE AND TRANSITION PROVISIONS.

19 1. This Act takes effect January 1, 1998.

20 2. A license issued pursuant to chapter 137A, 137B, or
21 137E before the effective date of this Act shall remain valid
22 and be deemed the same as a license issued pursuant to chapter
23 137F for the remaining term of the license.

24 3. An establishment with licenses under both chapters 137A
25 and 137B on the effective date of this Act shall not be issued
26 a license under chapter 137F until both licenses have expired.

27

EXPLANATION

28 This bill repeals Code chapters 137A, 137B, and 137E
29 effective January 1, 1998. The new chapter which replaces
30 these three chapters reflects the adoption on the federal
31 level of the 1995 model food code, and replaces the definition
32 of "bed and breakfast home" in the food code with the current
33 definition contained in Code section 137B.2. The separate
34 chapters governing food establishments, the food service
35 sanitation code, and food and beverage vending machines are

1 combined into one chapter. The bill deletes provisions that
2 allow the department to amend the food code through the
3 administrative rule process.

4 The bill provides for a revised license fee structure for
5 fees charged for licensing vending machines and food service
6 establishments, as well as an administrative fee of up to 10
7 percent of the total license fees collected in a fiscal year
8 which shall be charged to municipalities that regulate food
9 establishments. The bill amends other Code sections
10 containing internal references to the repealed chapters.

11 The bill also establishes a transition between licenses
12 issued under the repealed chapters and licenses issued under
13 chapter 137F.

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**HOUSE FILE 504
FISCAL NOTE**

A fiscal note for House File 504 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 504 provides for a revised license fee structure for fees charged for licensing food service establishments and vending machines, as well as an administrative fee of up to 10.0% of the total license fee collected in a fiscal year to be charged to municipalities that regulate food establishments. The Bill repeals Code of Iowa Chapters 137A, 137B, and 137E and replaces them with Chapter 137F which adopts the 1995 federal food code. The Bill also deletes provisions which allow the Department of Inspections and Appeals to amend the food code through the administrative rule process.

ASSUMPTIONS

1. Expenses, which are mainly salaries for State inspection personnel, will increase 5.0% per year.
2. The number of inspections performed by the Department of Inspections and Appeals and local health departments will remain constant. Currently, the Department conducts approximately 10.0% of all inspections of the food establishments in the State. The other 90.0% of inspections are conducted by city and county health departments through contractual agreements with the Director of the Department of Inspections and Appeals.
3. License fee revenue received by the Department of Inspections and Appeals will continue to be deposited in the General Fund and the General Assembly will continue to appropriate the funds to cover the regulation expenditures of the Department.
4. The full amount of the license fee increase will not occur until FY 1999 as the effective date of the Bill is January 1, 1998.
5. The costs for cities and counties to regulate food establishments will be based on the State costs of regulation.
6. Federal funds will remain static.

FISCAL IMPACT

Under current law, the annual license fee for food service establishments and vending machines generates \$156,000 in revenue to the State General Fund. The General Assembly appropriates funds to the Department of Inspections and Appeals to cover the cost of regulating food establishments.

House File 504 will generate additional license and administrative fee revenue to the State General Fund of \$44,000 for FY 1998 and \$245,000 for FY 1999 and each subsequent year. The expenditures for State regulation of food establishments are estimated to be \$384,000 in FY 1998 and \$403,000 in FY 1999. The following table shows the effect of the Bill on the State compared to current law.

-2-

	(numbers in thousands)					
	Fiscal Year 1998			Fiscal Year 1999		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
REVENUE						
General Fund \$	156	\$ 200	\$ 45	\$ 156	\$ 401	\$ 245
Federal Funds	11	11	0	11	11	0
Other	0	0	0	0	0	0
Total	\$ 166	\$ 211	\$ 45	\$ 166	\$ 411	\$ 245
EXPENDITURES						
Salaries \$	315	\$ 315	\$ 0	\$ 331	\$ 331	\$ 0
(FTE's)	(10.5)	(10.5)	(00.0)	(10.5)	(10.5)	(00.0)
Other	69	94	25	73	73	0
Total	\$ 384	\$ 409	\$ 25	\$ 403	\$ 403	\$ 0
NET EFFECT	\$ (218)	\$ (198)	\$ 20	\$ (237)	\$ 8	\$ 245

House File 504 will have a significant fiscal impact on cities and counties as local health departments conduct an estimated 23,000 annual inspections of food establishments. For cities and counties, the Bill will generate additional license fee revenues of \$318,000 for FY 1998 and \$637,000 for FY 1999. For some cities and counties, the current license fee revenue does not completely cover the cost of regulating food establishments. However, the actual fiscal impact of the Bill on municipal corporations will depend on the individual city or county. The following table shows the overall effect of the Bill on cities and counties compared to current law.

	(numbers in thousands)					
	Fiscal Year 1998			Fiscal Year 1999		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
REVENUE						
Fees	\$ 1,460	\$ 1,778	\$ 318	\$ 1,460	\$ 2,097	\$ 637
EXPENDITURES						
Salaries	\$ 2,436	\$ 2,558	\$ 122	\$ 2,436	\$ 2,683	\$ 246
Other	535	562	27	535	589	54
Total	\$ 2,971	\$ 3,120	\$ 149	\$ 2,971	\$ 3,271	\$ 300
NET EFFECT	\$ (1,511)	\$ (1,341)	\$ 170	\$ (1,511)	\$ (1,175)	\$ 336

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SOURCES

Department of Inspections and Appeals
Iowa State Association of Counties

(LSB 1893hv, PQP)

H-1150

1 Amend House File 504 as follows:

2 1. Page 12, by inserting after line 14 the
3 following:

4 "Any fee provided in this section which represents
5 an increase over the fee levels in existence prior to
6 the effective date of this Act shall be subject to a
7 five-year phase-in procedure. Each year following the
8 effective date of this Act, the fees shall be
9 increased by twenty percent of the total amount of the
10 fee increase so that after the fifth annual increase
11 the level provided for in this section shall have been
12 reached."

By RICHARDSON of Warren

H-1150 FILED MARCH 10, 1997

HOUSE FILE 504

H-1156

1 Amend House File 504 as follows:

2 1. Page 1, by striking lines 3 through 5 and
3 inserting the following:

4 "9. Administer and enforce this chapter, and
5 chapters 99B, 135B, 135C, 135G, 135H, 135J, ~~137A~~,
6 ~~137B~~, 137C, 137D, ~~137E~~ 137F."

7 2. Page 4, by striking line 7 and inserting the
8 following: "of forty-five degrees Fahrenheit or seven
9 degrees Celsius or".

10 3. Page 8, by inserting after line 10 the
11 following:

12 "17. 3-502.12(A) shall be amended by adding:
13 "Packaging of raw meat and raw poultry using a reduced
14 oxygen packaging method, with a thirty day "sell by"
15 date from the date it was packaged, will be exempt
16 from having an HACCP Plan that contains the
17 information required in this section and section 8-
18 201.14(D)."

19 4. By renumbering as necessary.

By BLODGETT of Cerro Gordo

H-1156 FILED MARCH 10, 1997

HOUSE FILE 504

H-1196

1 Amend House File 504 as follows:

2 1. Page 1, by striking lines 3 through 5 and
3 inserting the following:

4 "9. Administer and enforce this chapter, and
5 chapters 99B, 135B, 135C, 135G, 135H, 135J, ~~137A,~~
6 ~~137B,~~ 137C, 137D, and ~~137E~~ 137F."

7 2. Page 1, line 16, by striking the words "and
8 food processing".

9 3. Page 1, line 17, by striking the word
10 "plants".

11 4. Page 4, by striking line 7 and inserting the
12 following: "of forty-five degrees Fahrenheit or seven
13 degrees Celsius or".

14 5. Page 7, line 6, by striking the figure "(77)"
15 and inserting the following: "(79)".

16 6. Page 7, line 10, by striking the figure "(77)"
17 and inserting the following: "(79)".

18 7. Page 8, by inserting after line 23 the
19 following:

20 "20. 3-502.12(A) shall be amended by adding:
21 "Packaging of raw meat and raw poultry using a reduced
22 oxygen packaging method, with a "sell by" date of
23 thirty days from the date of packaging, shall not
24 require an HACCP plan containing the information
25 required in this section and in section 8-201.14(D)."

26 8. Page 11, line 6, by inserting after the word
27 "of" the following: "food in".

28 9. Page 11, line 21, by inserting after the word
29 "of" the following: "food in".

30 10. Page 12, line 1, by inserting after the word
31 "of" the following: "food in".

32 11. Page 14, line 26, by striking the words "or
33 food".

34 12. Page 14, line 27, by striking the words
35 "processing plants".

36 13. Page 14, line 28, by striking the words "or
37 food processing plant".

38 14. Page 15, line 30, by striking the words
39 "grocery store or".

By BLODGETT of Cerro Gordo

H-1196 FILED MARCH 17, 1997

HOUSE FILE 504

H-1366

- 1 Amend House File 504 as follows:
2 1. Page 10, by striking lines 34 and 35 and
3 inserting the following:
4 "2. For a temporary food establishment per fixed
5 location, the fee shall be as follows:
6 a. One to three days in the same location, twenty-
7 five dollars.
8 b. Four to seven days in the same location, sixty
9 dollars.
10 c. Eight or more days in the same location, one
11 hundred dollars."
12 2. Page 11, line 8, by striking the word "sixty"
13 and inserting the following: "fifty".
14 3. Page 11, line 10, by striking the words
15 "dollars, one hundred" and inserting the following:
16 "dollars, eighty".
17 4. Page 11, lines 13 and 14, by striking the
18 words "two hundred dollars" and inserting the
19 following: "one hundred seventy-five dollars".
20 5. Page 11, by striking lines 15 and 16 and
21 inserting the following:
22 "d. Annual gross sales of at least two hundred
23 fifty thousand dollars but less than five hundred
24 thousand dollars, two hundred dollars.
25 e. Annual gross sales of five hundred thousand
26 dollars or more, two hundred twenty-five dollars."
By HEATON of Henry

H-1366 FILED MARCH 25, 1997

HOUSE FILE 504

H-1339

- 1 Amend the amendment, H-1222, to House File 504 as
2 follows:
3 1. Page 1, line 3, by striking the words
4 "seventy-five" and inserting the following: "eighty-
5 five".
By BLODGETT of Cerro Gordo

H-1339 FILED MARCH 25, 1997

HOUSE FILE 504

H-1222

- 1 Amend House File 504 as follows:
2 1. Page 12, line 14, by inserting after the word
3 "fees" the following: "not to exceed seventy-five
4 percent of the total fees applicable".
By DIX of Butler

H-1222 FILED MARCH 18, 1997

HOUSE FILE 504

H-1489

1 Amend House File 504 as follows:

2 1. Page 8, by inserting after line 23 the
3 following:

4 "20. A carbonating device in a food establishment
5 shall have a dual check valve which shall be installed
6 so that it is upstream from the carbonating device and
7 downstream from any copper in the water supply line."

By BLODGETT of Cerro Gordo

H-1489 FILED APRIL 1, 1997

H-1840

1 Amend House File 504 as follows:

2 1. Page 12, by inserting after line 14 the
3 following:

4 "Any fee provided in this section which represents
5 an increase over the fee levels in existence prior to
6 the effective date of this Act shall be subject to a
7 two-year phase-in procedure. For the year beginning
8 on the effective date of this Act, the fees shall be
9 increased by fifty percent of the total amount of the
10 fee increase. For the year beginning one year from
11 the effective date of this Act, the fees shall be
12 increased by the remaining fifty percent of the fee
13 increase."

14 2. Page 12, by striking lines 17 through 25 and
15 inserting the following: "corporation shall be
16 subject to an administrative fee of not more than ten
17 percent of the total license fees collected in a
18 fiscal year, as provided by rule of the department
19 adopted pursuant to chapter 17A. The administrative
20 fee for a fiscal year shall be forwarded to the
21 department for credit to the general fund of the state
22 no later than June 10 of that fiscal year. Amounts
23 collected in excess of the administrative fee shall
24 not be retained or expended by a municipal corporation
25 without a corresponding decrease in the amount levied
26 for property taxes by the municipal corporation for
27 the following fiscal year."

By RANTS of Woodbury

H-1840 FILED APRIL 22, 1997

Blodgett, Chair

Dix

Myers

HSB 138

WAYS AND MEANS
Succeeded
SF/HF 504

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON DINKLA)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to regulation of food establishments and
2 providing for fees and penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 10A.104, subsection 9, Code 1997, is
2 amended to read as follows:

3 9. Administer and enforce this chapter, and chapters 99B,
4 135B, 135C, ~~135G, 135H, 135J, 137A, 137B,~~ 137C, 137D, and ~~137E~~
5 137F.

6 Sec. 2. Section 100.35, unnumbered paragraph 1, Code 1997,
7 is amended to read as follows:

8 The fire marshal shall adopt, and may amend rules under
9 chapter 17A, which include standards relating to exits and
10 exit lights, fire escapes, fire protection, fire safety and
11 the elimination of fire hazards, in and for churches, schools,
12 hotels, theaters, amphitheaters, hospitals, health care
13 facilities as defined in section 135C.1, boarding homes or
14 housing, rest homes, dormitories, college buildings, lodge
15 halls, club rooms, public meeting places, places of amusement,
16 apartment buildings, food establishments and food processing
17 plants as defined in section ~~137A.1, subsection 5, food~~
18 ~~service-establishments-as-defined-in-section-137B.2,~~
19 ~~subsection 6~~ 137F.1, and all other buildings or structures in
20 which persons congregate from time to time, whether publicly
21 or privately owned. Violation of a rule adopted by the fire
22 marshal is a simple misdemeanor. However, upon proof that the
23 fire marshal gave written notice to the defendant of the
24 violation, and proof that the violation constituted a clear
25 and present danger to life, and proof that the defendant
26 failed to eliminate the condition giving rise to the violation
27 within thirty days after receipt of notice from the fire
28 marshal, the penalty is that provided by law for a serious
29 misdemeanor. Each day of the continuing violation of a rule
30 after conviction of a violation of the rule is a separate
31 offense. A conviction is subject to appeal as in other
32 criminal cases.

33 Sec. 3. Section 137C.6, unnumbered paragraph 2, Code 1997,
34 is amended to read as follows:

35 If a municipal corporation wants its local board of health

1 to license, inspect, and otherwise enforce the Iowa hotel
2 sanitation code within its jurisdiction, the municipal
3 corporation may enter into an agreement to do so with the
4 director. The director may enter into the agreement if the
5 director finds that the local board of health has adequate
6 resources to perform the required functions. A municipal
7 corporation may only enter into an agreement to enforce the
8 Iowa hotel sanitation code if it also agrees to enforce the
9 Iowa food ~~service-sanitation~~ code pursuant to section ~~137B-6~~
10 ~~and-the-food-and-beverage-vending-machine-laws-pursuant-to~~
11 ~~section-137E-3~~ 137F.3.

12 Sec. 4. Section 137C.35, unnumbered paragraph 1, Code
13 1997, is amended to read as follows:

14 This chapter does not apply to bed and breakfast homes as
15 defined in section ~~137B-2~~ 137F.1. However, a bed and
16 breakfast home shall have a smoke detector in proper working
17 order in each sleeping room and a fire extinguisher in proper
18 working order on each floor. A bed and breakfast home which
19 does not receive its drinking water from a public water
20 supply, shall have its drinking water tested at least annually
21 by the state hygienic laboratory or the local board of health.
22 A violation of this section is punishable as provided in
23 section 137C.28.

24 Sec. 5. NEW SECTION. 137F.1 DEFINITIONS.

25 For the purpose of this chapter:

26 1. "Bed and breakfast home" means a private residence
27 which provides lodging and meals for guests, in which the host
28 or hostess resides and in which no more than two guest
29 families are lodged at the same time and which, while it may
30 advertise and accept reservations; does not hold itself out to
31 the public to be a restaurant, hotel, or motel, does not
32 require reservations, and serves food only to overnight
33 guests.

34 2. "Commissary" means a food establishment used for
35 preparing, fabricating, packaging, and storage of food or food

1 products for distribution and sale through the food
2 establishment's own food establishment outlets.

3 3. "Department" means the department of inspections and
4 appeals.

5 4. "Director" means the director of the department of
6 inspections and appeals.

7 5. "Farmers market" means a marketplace which seasonally
8 operates principally as a common market for fresh fruits and
9 vegetables on a retail basis for off-the-premises consumption.

10 6. "Food" means a raw, cooked, or processed edible
11 substance, ice, a beverage, an ingredient used or intended for
12 use or sale in whole or in part for human consumption, or
13 chewing gum.

14 7. "Food code" means the 1995 edition of the United States
15 food and drug administration food code.

16 8. "Food establishment" means an operation that stores,
17 prepares, packages, serves, vends, or otherwise provides food
18 for human consumption and includes a food service operation in
19 a school, summer camp, residential service substance abuse
20 treatment facility, halfway house substance abuse treatment
21 facility, correctional facility operated by the department of
22 corrections, the state training school, or the Iowa juvenile
23 home. "Food establishment" does not include the following:

24 a. A food processing plant.

25 b. An establishment that offers only prepackaged foods
26 that are nonpotentially hazardous.

27 c. A produce stand or facility which sells only whole,
28 uncut fresh fruits and vegetables.

29 d. Premises which are licensed as a home food
30 establishment pursuant to chapter 137D.

31 e. Premises which operate as a farmers market.

32 f. Premises of a residence in which food that is
33 nonpotentially hazardous is sold for consumption off-the-
34 premises, if the food is labeled to identify the name and
35 address of the person preparing the food and the common name

1 of the food. As used in this subsection, food that is
2 nonpotentially hazardous means only the following:

3 (1) Baked goods, except the following: soft pies, bakery
4 products with custard or cream fillings, or any other
5 potentially hazardous goods.

6 (2) Wholesome, fresh eggs that are kept at a temperature
7 of forty-one degrees Fahrenheit or five degrees Celsius or
8 less.

9 (3) Honey which is labeled with additional information as
10 provided by departmental rule.

11 g. A kitchen in a private home, if only food that is
12 nonpotentially hazardous is prepared for sale or service at a
13 function such as a religious or charitable organization's bake
14 sale and if the consumer is informed by a clearly visible
15 placard at the sales or service location that the food is
16 prepared in a kitchen that is not subject to regulation and
17 inspection by the regulatory authority or in an area where
18 food that is prepared as specified above is sold or offered
19 for human consumption.

20 h. A kitchen in a private home or a bed and breakfast
21 home.

22 i. A private home that receives catered or home-delivered
23 food.

24 j. Child day care facilities and other food establishment
25 facilities located in hospitals or health care facilities
26 which are subject to inspection by other state agencies or
27 divisions of the department.

28 k. Supply vehicles, vending machine locations, or
29 boardinghouses for permanent guests.

30 l. Establishments exclusively engaged in the processing of
31 meat and poultry which are licensed pursuant to section
32 189A.3.

33 m. Premises covered by a current class "A" beer permit as
34 provided in chapter 123.

35 9. "Food processing plant" means a commercial operation

1 that manufactures, packages, labels, or stores food for human
2 consumption and does not provide food directly to a consumer.
3 "Food processing plant" does not include premises covered by a
4 class "A" beer permit as provided in chapter 123.

5 10. "Mobile food unit" means a food establishment that is
6 readily movable, which either operates up to three consecutive
7 days at one location or returns to a home base of operation at
8 the end of each day.

9 11. "Municipal corporation" means a political subdivision
10 of this state.

11 12. "Perishable food" means potentially hazardous food.

12 13. "Potentially hazardous food" means a food that is
13 natural or synthetic and is in a form capable of supporting
14 the rapid and progressive growth of infectious or toxigenic
15 microorganisms, or the growth and toxin production of
16 clostridium botulinum. "Potentially hazardous food" includes
17 an animal food that is raw or heat-treated, a food of plant
18 origin that is heat-treated or consists of raw seed sprouts,
19 cut melons, and garlic and oil mixtures. "Potentially
20 hazardous food" does not include the following:

- 21 a. An air-cooled hard-boiled egg with shell intact.
22 b. A food with a water activity value of 0.85 or less.
23 c. A food with a hydrogen ion concentration (pH) level of
24 4.6 or below when measured at twenty-four degrees Centigrade
25 or seventy-five degrees Fahrenheit.
26 d. A food, in an unopened hermetically sealed container,
27 that is commercially processed to achieve and maintain
28 commercial sterility under conditions of nonrefrigerated
29 storage and distribution.

30 14. "Pushcart" means a non-self-propelled vehicle food
31 establishment limited to serving nonpotentially hazardous
32 foods or commissary-wrapped foods maintained at proper
33 temperatures, or limited to the preparation and serving of
34 frankfurters.

35 15. "Regulatory authority" means the department or a

1 municipal corporation that has entered into an agreement with
2 the director pursuant to section 137F.3 for authority to
3 enforce this chapter in its jurisdiction.

4 16. "Temporary food establishment" means a food
5 establishment that operates for a period of no more than
6 fourteen consecutive days in conjunction with a single event
7 or celebration.

8 17. "Vending machine" means a food establishment which is
9 a self-service device that, upon insertion of a coin, paper
10 currency, token, card, or key, dispenses unit servings of food
11 in bulk or in packages without the necessity of replenishing
12 the device between each vending operation.

13 18. "Vending machine location" means the physical site
14 where a vending machine is installed and operated, including
15 the storage and servicing areas on the premises that are used
16 in conjunction with the vending machine.

17 Sec. 6. NEW SECTION. 137F.2 ADOPTION BY RULE.

18 The director shall adopt the food code with the following
19 exceptions:

20 1. 3-201.11(B) shall be amended to allow food licensed
21 under chapter 137D or food specified under section 137F.1,
22 subsection 8, paragraph "f", to be used or offered for sale.

23 2. A nonprofit organization which engages in the serving
24 of food not more than one day per calendar week nor two or
25 more consecutive days is exempt from this chapter.

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

31 4. A vending machine commissary shall be inspected at
32 least once each calendar year.

33 5. A vending machine which only dispenses prepackaged food
34 that is nonpotentially hazardous is exempt from inspection and
35 licensing, except upon receipt of a verified complaint by the

1 regulatory authority.

2 6. 1-201.10(B)(31); 2-102.11; 2-201.11(D); 2-
3 201.13(A)(2)(b); 2-301.13; 3-401.11(B)(2); 3-501.14(B); 4-
4 101.17(A); 5-203.11(B); 5-203.15; and 6-301.11(B) shall be
5 deleted.

6 7. 1-201.10(B)(77)(b) shall be amended to read as follows:
7 "(b) 'Single-use articles' includes items such as wax paper,
8 butcher paper, plastic wrap, formed aluminum food containers,
9 jars, bread wrappers, ketchup bottles, and number 10 cans."

10 8. 1-201.10(B)(77) shall be amended by adding the
11 following: "(c) The reuse of food grade containers that meet
12 the characteristics in section 4-101.11 is permitted."

13 9. 2-201.12(B)(2) shall be amended by adding: "Shigella
14 spp. and E. Coli 0157:H7" after the word "typhi."

15 10. 2-304.11 shall be amended to read: "Food employees
16 shall wear clean clothing to prevent contamination."

17 11. 2-403.11 shall be amended by adding the following:
18 "(C) Food employees handing edible fish in aquariums, or
19 shellfish or crustacea in display tanks shall wash their hands
20 before handling exposed food, cleaning equipment, utensils,
21 and lien, or unwrapped single-service and single-use
22 articles."

23 12. 3-201.14 shall be amended by striking all language and
24 inserting: "Fish may not be received for sale or service
25 unless they are commercially and legally caught or harvested,
26 or as approved by the regulatory authority."

27 13. 3-401.11(D) shall be amended by adding the following:
28 "(D) When ordered by the immediate consumer, whole-muscle
29 intact beef steaks, which have been seared on both sides, be
30 exempted from the minimum cooking requirements."

31 14. 3-501.14(A) shall be amended by striking the word
32 "Cooked".

33 15. 3-501.16(B) shall be amended by adding the following:
34 "Existing equipment in establishments licensed as of July 1,
35 1997, which cannot maintain a minimum temperature of forty-one

1 degrees Fahrenheit or five degrees Celsius shall be allowed to
2 maintain potentially hazardous food for up to a total of three
3 days at forty-five degrees Fahrenheit or seven degrees Celsius
4 and further that existing equipment will be upgraded to meet
5 the forty-one degrees Fahrenheit or five degrees Celsius
6 requirement or replaced within five years."

7 16. 3-501.18(A) shall be amended by adding: "or if
8 maintained at forty-five degrees Fahrenheit or seven degrees
9 Celsius, shall be discarded after three days for ready-to-eat
10 potentially hazardous foods".

11 17. 3-603.11 shall be amended by adding: "The following
12 standardized language shall be used on the required consumer
13 advisory: 'Thoroughly cooking foods of animal origin such as
14 beef, eggs, fish, lamb, pork, poultry, or shellfish reduces
15 the risk of food-borne illness. Individuals with certain
16 health conditions may be at higher risk if these foods are
17 consumed raw or undercooked. Consult your physician or public
18 health official for further information.'"

19 18. 5-302.16 shall be amended by adding: "Such hoses
20 shall also fully comply with subsection 4-101.11."

21 19. 6-501.111(B)(3) shall be amended by striking the word
22 "extermination" and inserting in lieu thereof the words "pest
23 control".

24 Sec. 7. NEW SECTION. 137F.3 AUTHORITY TO ENFORCE.

25 The director shall regulate, license, and inspect food
26 establishments and food processing plants and enforce this
27 chapter pursuant to rules adopted by the department in
28 accordance with chapter 17A. Municipal corporations shall not
29 regulate, license, inspect, or collect license fees from food
30 establishments and food processing plants, except as provided
31 in this section.

32 A municipal corporation may enter into an agreement with
33 the director to provide that the municipal corporation shall
34 license, inspect, and otherwise enforce this chapter within
35 its jurisdiction. The director may enter into the agreement

1 if the director finds that the municipal corporation has
2 adequate resources to perform the required functions.
3 However, the department shall license and inspect all food
4 processing plants which manufacture, package, or label food
5 products. A municipal corporation may license and inspect, as
6 authorized by this section, food processing plants whose
7 operations are limited to the storage of food products.

8 If the director enters into an agreement with a municipal
9 corporation as provided by this section, the director shall
10 provide that the inspection practices of a municipal
11 corporation are spot-checked on a regular basis.

12 A municipal corporation that is responsible for enforcing
13 this chapter within its jurisdiction pursuant to an agreement
14 shall make an annual report to the director providing the
15 following information:

16 1. The total number of licenses granted or renewed by the
17 municipal corporation under this chapter during the year.

18 2. The number of licenses granted or renewed by the
19 municipal corporation under this chapter during the year in
20 each of the following categories:

- 21 a. Food establishments.
- 22 b. Food processing plants.
- 23 c. Mobile food units and pushcarts.
- 24 d. Temporary food establishments.
- 25 e. Vending machines.

26 3. The amount of money collected in license fees during
27 the year.

28 4. Other information the director requests.

29 The director shall monitor municipal corporations which
30 have entered into an agreement pursuant to this section to
31 determine if they are enforcing this chapter within their
32 respective jurisdictions. If the director determines that
33 this chapter is not enforced by a municipal corporation, the
34 director may rescind the agreement after reasonable notice and
35 an opportunity for a hearing. If the agreement is rescinded,

1 the director shall assume responsibility for enforcement in
2 the jurisdiction involved.

3 Sec. 8. NEW SECTION. 137F.4 LICENSE REQUIRED.

4 A person shall not open or operate a food establishment or
5 food processing plant until the appropriate license has been
6 obtained from the regulatory authority. Sale of products at
7 wholesale to outlets not owned by a commissary owner requires
8 a food processing plant license. A license shall expire one
9 year from the date of issue. A license is renewable. All
10 licenses issued under this chapter that are not renewed by the
11 licensee on or before the expiration date shall be subject to
12 a penalty of ten percent per month of the license fee if the
13 license is renewed at a later date.

14 Sec. 9. NEW SECTION. 137F.5 APPLICATION FOR LICENSE.

15 An application form prescribed by the department for a
16 license under this chapter shall be obtained from the
17 department or from a municipal corporation which is a
18 regulatory authority. A completed application shall be
19 submitted to the appropriate regulatory authority.

20 The dominant form of business shall determine the type of
21 license for establishments which engage in operations covered
22 under both the definition of a food establishment and of a
23 food processing plant.

24 The regulatory authority where the unit is domiciled shall
25 issue a license for a mobile food unit.

26 An application for renewal of a license shall be made at
27 least thirty days before the expiration of the existing
28 license.

29 Sec. 10. NEW SECTION. 137F.6 LICENSE FEES.

30 The regulatory authority shall collect the following annual
31 license fees:

32 1. For a mobile food unit or pushcart, seventy-five
33 dollars.

34 2. For a temporary food establishment per fixed location,
35 twenty-five dollars.

- 1 3. For a vending machine, twenty dollars for the first
2 machine and five dollars for each additional machine.
- 3 4. For a food establishment or a section of a food
4 establishment, which prepares or serves food for individual
5 portion service, the annual license fee shall correspond to
6 the annual gross sales of the food establishment, as follows:
- 7 a. Annual gross sales of under fifty thousand dollars,
8 sixty dollars.
- 9 b. Annual gross sales of at least fifty thousand dollars
10 but less than one hundred thousand dollars, one hundred
11 dollars.
- 12 c. Annual gross sales of at least one hundred thousand
13 dollars but less than two hundred fifty thousand dollars, two
14 hundred dollars.
- 15 d. Annual gross sales of two hundred fifty thousand
16 dollars or more, two hundred twenty-five dollars.
- 17 5. For a food establishment or section of a food
18 establishment, which sells food or food products to consumer
19 customers intended for preparation or consumption off-the-
20 premises, the annual license fee shall correspond to the
21 annual gross sales of the food establishment, as follows:
- 22 a. Annual gross sales of under ten thousand dollars,
23 thirty dollars.
- 24 b. Annual gross sales of at least ten thousand dollars but
25 less than two hundred fifty thousand dollars, seventy-five
26 dollars.
- 27 c. Annual gross sales of at least two hundred fifty
28 thousand dollars but less than five hundred thousand dollars,
29 one hundred fifteen dollars.
- 30 d. Annual gross sales of at least five hundred thousand
31 dollars but less than seven hundred fifty thousand dollars,
32 one hundred fifty dollars.
- 33 e. Annual gross sales of seven hundred fifty thousand
34 dollars or more, two hundred twenty-five dollars.
- 35 6. For a food processing plant, the annual license fee

1 shall correspond to the annual gross sales of the food
2 processing plant, as follows:

3 a. Annual gross sales of under fifty thousand dollars,
4 fifty dollars.

5 b. Annual gross sales of at least fifty thousand dollars
6 but less than two hundred fifty thousand dollars, one hundred
7 dollars.

8 c. Annual gross sales of at least two hundred fifty
9 thousand dollars but less than five hundred thousand dollars,
10 one hundred fifty dollars.

11 d. Annual gross sales of five hundred thousand dollars or
12 more, two hundred fifty dollars.

13 A food establishment covered by subsections 4 and 5 shall
14 be assessed license fees under both subsections.

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

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

31 Sec. 11. NEW SECTION. 137F.7 SUSPENSION OR REVOCATION OF
32 LICENSES.

33 The regulatory authority may suspend or revoke a license
34 issued to a person under this chapter pursuant to rules
35 adopted by the department if any of the following occurs:

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

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

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

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

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

14 Sec. 13. NEW SECTION. 137F.9 OPERATION WITHOUT
15 INSPECTION PROHIBITED.

16 A person shall not open or operate a food establishment or
17 food processing plant until an inspection has been made and a
18 license has been issued by the regulatory authority.

19 Inspections shall be conducted according to standards adopted
20 by rule of the department pursuant to chapter 17A.

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

24 Sec. 14. NEW SECTION. 137F.10 REGULAR INSPECTIONS.

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

1 Sec. 15. NEW SECTION. 137F.11 INSPECTION UPON COMPLAINT.

2 Upon receipt of a complaint by a customer of a food
3 establishment or food processing plant stating facts
4 indicating the premises are in an unsanitary condition, the
5 regulatory authority may conduct an inspection.

6 Sec. 16. NEW SECTION. 137F.12 PLUMBING.

7 A food establishment or food processing plant shall have an
8 adequately designed plumbing system conforming to at least the
9 minimum requirements of the state plumbing code, or local
10 plumbing code, whichever is more stringent. The plumbing
11 system shall have a connection to a municipal water and sewer
12 system or to a benefited water district or sanitary district
13 if such facilities are available.

14 Sec. 17. NEW SECTION. 137F.13 WATER AND WASTE TREATMENT.

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

19 Sec. 18. NEW SECTION. 137F.14 TOILETS AND LAVATORIES.

20 A food establishment or food processing plant shall provide
21 toilet and lavatory facilities in accordance with rules
22 adopted by the department pursuant to this chapter in
23 accordance with chapter 17A.

24 Sec. 19. NEW SECTION. 137F.15 FIRE SAFETY.

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

30 Sec. 20. NEW SECTION. 137F.16 CONFLICTS WITH STATE
31 BUILDING CODE.

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

1 Sec. 21. NEW SECTION. 137F.17 PENALTY.

2 A person who violates this chapter or rules adopted
3 pursuant to this chapter commits a simple misdemeanor.

4 Sec. 22. NEW SECTION. 137F.18 INJUNCTION.

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

11 Sec. 23. NEW SECTION. 137F.19 DUTY OF COUNTY OR CITY
12 ATTORNEY.

13 The county attorney in each county or city attorney in each
14 city shall assist in the enforcement of this chapter.

15 Sec. 24. Section 172A.6, unnumbered paragraph 1, Code
16 1997, is amended to read as follows:

17 The license and financial responsibility provisions of this
18 chapter shall not apply to any person who is licensed by the
19 secretary as provided in chapter ~~137A~~ 137F, 171, or 172 and
20 who purchases livestock for slaughter valued at less than an
21 average daily value of two thousand five hundred dollars
22 during the preceding twelve months or such part thereof as the
23 person was purchasing livestock. Said licensees are made
24 subject to this chapter as to the regulatory and penal
25 provisions hereof. All other provisions of this chapter shall
26 apply to said dealers or brokers.

27 Sec. 25. Section 189A.3, unnumbered paragraph 1, Code
28 1997, is amended to read as follows:

29 No person shall operate an establishment other than a
30 grocery store or food service establishment as defined in
31 section ~~137B-2~~ 137F.1 without first obtaining a license from
32 the department. The license fee for each establishment per
33 year or any part of a year shall be:

34 Sec. 26. Section 331.382, subsection 5, Code 1997, is
35 amended to read as follows:

1 5. The board shall not regulate, license, inspect, or
2 collect license fees from food service establishments or food
3 and beverage vending machines except as provided in chapter
4 ~~137B~~ 137F or from hotels except as provided in chapter 137C or
5 ~~for-food-and-beverage-vending-machines-except-as-provided-in~~
6 ~~section-137E-3.~~

7 Sec. 27. Section 331.756, subsection 32, Code 1997, is
8 amended to read as follows:

9 32. Assist the department of inspections and appeals in
10 the enforcement of ~~the-food-establishment-laws,~~ the Iowa food
11 ~~service-sanitation code,~~ and the Iowa hotel sanitation code as
12 provided in sections ~~137A-26,~~ ~~137B-21,~~ 137F.19 and 137C.30.

13 Sec. 28. Section 453A.36, subsection 6, Code 1997, is
14 amended to read as follows:

15 6. Any sales of cigarettes or tobacco products made
16 through a cigarette vending machine are subject to rules and
17 penalties relative to retail sales of cigarettes and tobacco
18 products provided for in this chapter. No cigarettes shall be
19 sold through any cigarette vending machine unless the
20 cigarettes have been properly stamped or metered as provided
21 by this division, and in case of violation of this provision,
22 the permit of the dealer authorizing retail sales of
23 cigarettes shall be canceled. Payment of the license fee as
24 provided in section 453A.13 authorizes a cigarette vendor to
25 sell cigarettes or tobacco products through vending machines,
26 provided that the following conditions are met: the machines
27 are located in places where the machines are under the
28 supervision of a person of legal age who is responsible for
29 prevention of purchase by minors from the machines; the
30 machines are equipped with a lock-out device under the control
31 of a person of legal age who shall directly regulate the sale
32 of items through the machines, and which shall include a
33 mechanism to prevent the machines from functioning if the
34 power source for the lock-out device fails or if the lock-out
35 device is disabled, and a mechanism to ensure that only one

1 pack of cigarettes or one tobacco product is dispensed at a
2 time; and the location where the machines are placed is
3 covered by a local retail permit. However, a lock-out device
4 is not required for machines operated in the following
5 locations, if the machines are not to be placed in a doorway
6 or other area readily accessible to minors: a commercial
7 establishment holding a class "C" liquor license or a class
8 "B" beer permit under chapter 123, if the establishment is not
9 also licensed as a food service establishment under chapter
10 ~~137B~~ 137F; a private facility not open to the public; or a
11 workplace not open to the public. This section does not
12 require a retail licensee to buy a cigarette vendor's permit
13 if the retail licensee is in fact the owner of the cigarette
14 vending machines and the machines are operated in the location
15 described in the retail permit.

16 Sec. 29. Chapters 137A, 137B, and 137E, Code 1997, are
17 repealed.

18 Sec. 30. EFFECTIVE DATE AND TRANSITION PROVISIONS.

19 1. This Act takes effect January 1, 1998.

20 2. A license issued pursuant to chapter 137A, 137B, or
21 137E before the effective date of this Act shall remain valid
22 and be deemed the same as a license issued pursuant to chapter
23 137F for the remaining term of the license.

24 3. An establishment with licenses under both chapters 137A
25 and 137B on the effective date of this Act shall not be issued
26 a license under chapter 137F until both licenses have expired.

27 EXPLANATION

28 This bill repeals Code chapters 137A, 137B, and 137E
29 effective January 1, 1998. The new chapter which replaces
30 these three chapters reflects the adoption on the federal
31 level of the 1995 model food code, and replaces the definition
32 of "bed and breakfast home" in the food code with the current
33 definition contained in Code section 137B.2. The separate
34 chapters governing food establishments, the food service
35 sanitation code, and food and beverage vending machines are

1 combined into one chapter. The bill deletes provisions that
2 allow the department to amend the food code through the
3 administrative rule process.

4 The bill provides for a revised license fee structure for
5 fees charged for licensing vending machines and food service
6 establishments, as well as an administrative fee of up to 10
7 percent of the total license fees collected in a fiscal year
8 which shall be charged to municipalities that regulate food
9 establishments. The bill amends other Code sections
10 containing internal references to the repealed chapters.

11 The bill also establishes a transition between licenses
12 issued under the repealed chapters and licenses issued under
13 chapter 137F.

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