

Senate Study Bill 3165 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON BOLKCOM)

A BILL FOR

1 An Act relating to licensure, regulation, and complaint
2 procedures for the hotel sanitation code, home food
3 establishments, and food establishments and food processing
4 plants, and modifying fees and penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

HOTEL SANITATION CODE

1
2
3 Section 1. Section 137C.6, subsection 3, paragraph b, Code
4 2016, is amended to read as follows:

5 b. The number of hotel licenses granted or renewed during
6 the year broken down into the following categories:

7 (1) Hotels containing ~~fifteen~~ thirty guest rooms or less.

8 (2) Hotels containing more than ~~fifteen~~ thirty but less than
9 ~~thirty-one~~ one hundred one guest rooms.

10 (3) Hotels containing more than ~~thirty~~ but less than
11 ~~seventy-six~~ one hundred one guest rooms.

12 ~~(4) Hotels containing more than seventy-five but less than~~
13 ~~one hundred fifty guest rooms.~~

14 ~~(5) Hotels containing one hundred fifty or more guest rooms.~~

15 Sec. 2. Section 137C.7, Code 2016, is amended to read as
16 follows:

17 **137C.7 License required.**

18 ~~No~~ A person shall not open or operate a hotel until the
19 regulatory authority has inspected the hotel and issued
20 ~~a license has been obtained from the regulatory authority~~
21 ~~and until the hotel has been inspected by the regulatory~~
22 ~~authority to the person.~~ The regulatory authority shall
23 conduct inspections in accordance with standards adopted by
24 the department by rule pursuant to chapter 17A. Each license
25 shall expire one year from the date of issue. A license is
26 renewable. All licenses issued under ~~the Iowa hotel sanitation~~
27 ~~code~~ this chapter that are not renewed by the licensee on or
28 before the expiration date shall be subject to a penalty of ten
29 percent of the license fee per month if the license is renewed
30 at a later date. A license is not transferable.

31 Sec. 3. Section 137C.9, subsection 1, Code 2016, is amended
32 to read as follows:

33 1. Either the department or the municipal corporation shall
34 collect the following annual license fees:

35 a. For a hotel containing ~~fifteen~~ thirty guest rooms or

1 organizations.

2 4. "*Prepared food*" means soft pies, bakery products with a
3 custard or cream filling, or ~~any other potentially hazardous~~
4 baked goods that are a time/temperature control for safety
5 food. "*Prepared food*" does not ~~mean nonhazardous~~ include baked
6 goods that are not a time/temperature control for safety food,
7 including but not limited to breads, fruit pies, cakes, or
8 other ~~nonhazardous~~ pastries that are not a time/temperature
9 control for safety food.

10 Sec. 7. Section 137D.1, Code 2016, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 5. "*Time/temperature control for safety*
13 *food*" means a food that requires time and temperature controls
14 for safety to limit pathogenic microorganism growth or toxin
15 formation.

16 Sec. 8. Section 137D.2, Code 2016, is amended to read as
17 follows:

18 **137D.2 Licenses and inspections.**

19 1. A person shall not open or operate a home ~~food~~
20 ~~establishment~~ bakery until a license has been obtained from the
21 department of inspections and appeals. The department shall
22 collect a fee of ~~thirty-three dollars and seventy-five cents~~
23 fifty dollars for a license. After collection, the fees shall
24 be deposited in the general fund of the state. A license shall
25 expire one year from date of issue. A license is renewable.

26 2. A person shall not sell or distribute from a home ~~food~~
27 ~~establishment~~ bakery if the home ~~food establishment~~ bakery is
28 unlicensed, the license of the home ~~food establishment~~ bakery
29 is suspended, or the food fails to meet standards adopted for
30 such food by the department.

31 3. An application for a license under **this chapter** shall be
32 made upon a form furnished by the department and shall contain
33 the items required by it according to rules adopted by the
34 department.

35 4. The department shall regulate, license, and inspect home

1 ~~food establishments~~ bakeries according to standards adopted by
2 rule.

3 5. The department shall provide for the periodic inspection
4 of a home ~~food establishment~~ bakery. The inspector may enter
5 the home ~~food establishment~~ bakery at any reasonable hour to
6 make the inspection. The department shall inspect only those
7 areas related to preparing food for sale.

8 6. The department shall regulate and inspect food prepared
9 at a home ~~food establishment~~ bakery according to standards
10 adopted by rule. The inspection may occur at any place where
11 the prepared food is created, transported, or stored for sale
12 or resale.

13 Sec. 9. Section 137D.3, Code 2016, is amended to read as
14 follows:

15 **137D.3 Penalty.**

16 A person who violates a provision of **this chapter**, including
17 a standard adopted by departmental rule, relating to home ~~food~~
18 ~~establishments~~ bakeries or prepared foods created in a home
19 ~~food establishment~~ bakery, is guilty of a simple misdemeanor.
20 Each day that the violation continues constitutes a separate
21 offense.

22 Sec. 10. Section 137D.4, Code 2016, is amended to read as
23 follows:

24 **137D.4 Injunction.**

25 A person operating a home ~~food establishment~~ bakery or
26 selling prepared foods created at a home ~~food establishment~~
27 bakery in violation of a provision of **this chapter** may be
28 restrained by injunction from further operating that home ~~food~~
29 ~~establishment~~ bakery. If an imminent health hazard exists, the
30 home ~~food establishment~~ bakery must cease operation. Operation
31 shall not be resumed until authorized by the department.

32 Sec. 11. Section 137D.6, Code 2016, is amended to read as
33 follows:

34 **137D.6 Conflicts with state building code.**

35 Provisions of **this chapter**, including standards for home

1 ~~food establishments~~ bakeries adopted by the department, in
2 conflict with the state building code, as adopted pursuant
3 to [section 103A.7](#), shall not apply where the state building
4 code has been adopted or when the state building code applies
5 throughout the state.

6 Sec. 12. Section 137D.8, subsections 1 and 3, Code 2016, are
7 amended to read as follows:

8 1. The person's home ~~food establishment~~ bakery does not
9 conform to a provision of [this chapter](#) or a rule adopted
10 pursuant to [this chapter](#).

11 3. The person conducts an activity constituting a criminal
12 offense in the home ~~food establishment~~ bakery and is convicted
13 of a serious misdemeanor or a more serious offense as a result.

14 Sec. 13. Section 137F.1, subsection 7, paragraph d, Code
15 2016, is amended to read as follows:

16 *d.* Premises which are a home ~~food establishment~~ bakery
17 pursuant to [chapter 137D](#).

18 DIVISION III

19 FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

20 Sec. 14. Section 137F.1, Code 2016, is amended by adding the
21 following new subsections:

22 NEW SUBSECTION. 4A. "*Event*" means a significant occurrence
23 or happening sponsored by a civic, business, educational,
24 governmental, community, or veterans organization and may
25 include an athletic contest.

26 NEW SUBSECTION. 15A. "*Time/temperature control for safety*
27 *food*" means a food that requires time and temperature controls
28 for safety to limit pathogenic microorganism growth or toxin
29 formation.

30 Sec. 15. Section 137F.1, subsection 7, unnumbered paragraph
31 1, Code 2016, is amended to read as follows:

32 "*Food establishment*" means an operation that stores,
33 prepares, packages, serves, vends, or otherwise provides food
34 for human consumption and includes a food service operation
35 in a salvage or distressed food operation, school, summer

1 camp, residential service substance abuse treatment facility,
2 halfway house substance abuse treatment facility, correctional
3 facility operated by the department of corrections, or the
4 state training school, ~~or the Iowa juvenile home.~~ "Food
5 establishment" does not include the following:

6 Sec. 16. Section 137F.1, subsection 7, paragraphs b, e, and
7 f, Code 2016, are amended to read as follows:

8 b. An establishment that offers only prepackaged foods that
9 are ~~nonpotentially hazardous~~ not time/temperature control for
10 safety foods.

11 e. Premises where a person operates a farmers market, if
12 ~~potentially hazardous food is~~ time/temperature control for
13 safety foods are not sold or distributed from the premises.

14 f. Premises of a residence in which food that is
15 ~~nonpotentially hazardous~~ not a time/temperature control for
16 safety food is sold for consumption off the premises to a
17 consumer customer, if the food is labeled to identify the name
18 and address of the person preparing the food and the common
19 name of the food.

20 Sec. 17. Section 137F.1, subsections 11 and 12, Code 2016,
21 are amended by striking the subsections.

22 Sec. 18. Section 137F.1, subsections 13, 15, 16, and 17,
23 Code 2016, are amended to read as follows:

24 13. "Pushcart" means a non-self-propelled vehicle food
25 establishment limited to serving ~~nonpotentially hazardous foods~~
26 foods that are not time/temperature control for safety foods or
27 commissary-wrapped foods maintained at proper temperatures, or
28 limited to the preparation and serving of frankfurters.

29 15. "Temporary food establishment" means a food
30 establishment that operates for a period of no more than
31 fourteen consecutive days in conjunction with a single event
32 ~~or celebration.~~

33 16. "Vending machine" means a ~~food establishment which is~~
34 a self-service device that, upon insertion of a coin, paper
35 currency, token, card, or key, or by optional manual operation,

1 dispenses unit servings of food in bulk or in packages without
2 the necessity of replenishing the device between each vending
3 operation.

4 17. "*Vending machine location*" means the ~~physical site~~
5 room, enclosure, space, or area where a one or more vending
6 ~~machine is~~ machines are installed and operated, including the
7 storage and servicing areas on the premises that are used in
8 ~~conjunction with~~ to service and maintain the vending machine.

9 Sec. 19. Section 137F.3, subsection 4, Code 2016, is amended
10 to read as follows:

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

15 ~~a. The total number of licenses granted or renewed by the~~
16 ~~municipal corporation under this chapter during the year.~~

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

20 ~~(1) Food establishments.~~

21 ~~(2) Food processing plants.~~

22 ~~(3) Mobile food units and pushcarts.~~

23 ~~(4) Temporary food establishments.~~

24 ~~(5) Vending machines.~~

25 ~~c. The amount of money collected in license fees during the~~
26 ~~year.~~

27 ~~d. The amount expended to perform the functions required~~
28 ~~under the agreement, submitted on a form prescribed by the~~
29 ~~department.~~

30 ~~e. Other information the director requests~~ use the data
31 system prescribed by the director for activities governed by an
32 agreement executed pursuant to this section.

33 Sec. 20. Section 137F.4, Code 2016, is amended to read as
34 follows:

35 **137F.4 License required.**

1 A person shall not operate a food establishment or food
2 processing plant to provide goods or services to the general
3 public, or open a food establishment to the general public,
4 until the appropriate license has been obtained from the
5 regulatory authority. Sale of products at wholesale to outlets
6 not owned by a commissary owner requires a food processing
7 plant license. A license shall expire one year from the date
8 of issue. A license is renewable if application for renewal is
9 made prior to expiration of the license or within sixty days
10 of the expiration date of the license. All licenses issued
11 under **this chapter** that are not renewed by the licensee on or
12 before the expiration date shall be subject to a penalty of ten
13 percent per month of the license fee if the license is renewed
14 at a later date.

15 Sec. 21. Section 137F.5, Code 2016, is amended to read as
16 follows:

17 **137F.5 Application for license.**

18 1. An application form prescribed by the department
19 for a license under **this chapter** shall be obtained from
20 the department or from a municipal corporation which is
21 a regulatory authority. A completed application and an
22 application fee of two hundred dollars shall be submitted
23 to the appropriate regulatory authority. However, an
24 application for a license for a farmers market, temporary food
25 establishment for a single event, temporary food establishment
26 for multiple nonconcurrent events, or vending machine is exempt
27 from the application fee requirement under this subsection.

28 2. A person conducting an event shall submit a license
29 application and an application fee of fifty dollars to the
30 appropriate regulatory authority at least sixty days in advance
31 of the event. An "event" for purposes of this subsection does
32 not include a fair as defined in section 174.1 or a farmers
33 market with ten or more temporary food establishments.

34 3. The dominant form of business shall determine the type of
35 license for establishments which engage in operations covered

1 under both the definition of a food establishment and of a food
2 processing plant.

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

5 ~~An application for renewal of a license shall be made~~
6 ~~at least thirty days before the expiration of the existing~~
7 ~~license.~~

8 Sec. 22. Section 137F.6, subsection 1, Code 2016, is amended
9 to read as follows:

10 1. The regulatory authority shall collect the following
11 annual license fees:

12 a. For a mobile food unit or pushcart, ~~twenty-seven~~ two
13 hundred fifty dollars.

14 b. For a temporary food establishment per fixed location
15 for a single event, ~~thirty-three dollars and fifty cents~~ fifty
16 dollars.

17 c. For a temporary food establishment for multiple
18 nonconcurrent events during a calendar year, one annual
19 license fee of two hundred dollars for each establishment on a
20 countywide basis.

21 ~~e.~~ d. For a vending machine, ~~twenty~~ fifty dollars for
22 the first machine and ~~five~~ twenty dollars for each additional
23 machine.

24 ~~d.~~ e. For a food establishment which prepares or serves
25 food for individual portion service intended for consumption
26 on-the-premises, the annual license fee shall correspond to the
27 annual gross food and beverage sales of the food establishment,
28 as follows:

29 (1) Annual gross sales of ~~under fifty~~ less than one hundred
30 thousand dollars, sixty-seven dollars and fifty cents one
31 hundred fifty dollars.

32 (2) Annual gross sales of at least fifty one hundred
33 thousand dollars but less than one five hundred thousand
34 dollars, one hundred fourteen dollars and fifty cents three
35 hundred dollars.

1 (3) Annual gross sales of ~~at least one~~ five hundred thousand
2 dollars ~~but less than two hundred fifty thousand dollars, two~~
3 ~~hundred thirty-six dollars and twenty-five cents~~ or more, four
4 hundred dollars.

5 ~~(4) Annual gross sales of two hundred fifty thousand dollars~~
6 ~~but less than five hundred thousand dollars, two hundred~~
7 ~~seventy-five dollars.~~

8 ~~(5) Annual gross sales of five hundred thousand dollars or~~
9 ~~more, three hundred three dollars and seventy-five cents.~~

10 ~~e, f.~~ For a food establishment which sells food or food
11 products to consumer customers intended for preparation or
12 consumption off-the-premises, the annual license fee shall
13 correspond to the annual gross food and beverage sales of the
14 food establishment, as follows:

15 (1) Annual gross sales of ~~under ten~~ less than two hundred
16 fifty thousand dollars, ~~forty dollars and fifty cents~~ one
17 hundred fifty dollars.

18 (2) Annual gross sales of at least ~~ten~~ two hundred fifty
19 thousand dollars but less than ~~two~~ seven hundred fifty thousand
20 dollars, ~~one hundred one dollars and twenty-five cents~~ three
21 hundred dollars.

22 (3) Annual gross sales of ~~at least two~~ seven hundred fifty
23 thousand dollars ~~but less than five hundred thousand dollars,~~
24 ~~one hundred fifty-five dollars and twenty-five cents~~ or more,
25 four hundred dollars.

26 ~~(4) Annual gross sales of at least five hundred thousand~~
27 ~~dollars but less than seven hundred fifty thousand dollars, two~~
28 ~~hundred two dollars and fifty cents.~~

29 ~~(5) Annual gross sales of seven hundred fifty thousand~~
30 ~~dollars or more, three hundred three dollars and seventy-five~~
31 ~~cents.~~

32 ~~f, g.~~ For a food processing plant, the annual license fee
33 shall correspond to the annual gross food and beverage sales of
34 the food processing plant, as follows:

35 (1) Annual gross sales of ~~under fifty~~ less than two hundred

1 thousand dollars, ~~sixty-seven dollars and fifty cents~~ one
2 hundred fifty dollars.

3 (2) Annual gross sales of at least fifty two hundred
4 thousand dollars but less than ~~two hundred fifty thousand~~
5 million dollars, one hundred thirty-five dollars three hundred
6 dollars.

7 (3) Annual gross sales of at least ~~two hundred fifty~~
8 ~~thousand~~ million dollars but less than ~~five hundred thousand~~
9 ~~dollars, two hundred two dollars and fifty cents~~ or more, five
10 hundred dollars.

11 ~~(4) Annual gross sales of five hundred thousand dollars or~~
12 ~~more, three hundred thirty-seven dollars and fifty cents.~~

13 ~~g.~~ h. For a farmers market where ~~potentially hazardous~~
14 time/temperature control for safety food is sold or
15 distributed, one annual license fee of one hundred fifty
16 dollars for each vendor on a countywide basis.

17 i. For a school, three hundred dollars for a production
18 kitchen and two hundred dollars for a serving site.

19 j. For a certificate of free sale or sanitation, thirty-five
20 dollars for the first certificate and ten dollars for each
21 additional identical certificate requested at the same time.

22 ~~h.~~ k. For a food establishment covered by both paragraphs
23 ~~"d" "e" and "e" "f", the license fees assessed shall be an~~
24 ~~amount not to exceed seventy-five percent of the total fees~~
25 ~~applicable under both paragraphs~~ applicant shall pay the
26 licensee fee based on the dominant form of business plus one
27 hundred fifty dollars.

28 Sec. 23. Section 137F.6, subsection 2, Code 2016, is amended
29 by striking the subsection.

30 Sec. 24. Section 137F.10, Code 2016, is amended to read as
31 follows:

32 **137F.10 Regular inspections.**

33 The appropriate regulatory authority shall provide for the
34 inspection of each food establishment and food processing plant
35 in this state in accordance with [this chapter](#) and with rules

1 adopted pursuant to **this chapter** in accordance with chapter
2 17A. A regulatory authority may enter a food establishment
3 or food processing plant at any reasonable hour to conduct
4 an inspection. The manager or person in charge of the food
5 establishment or food processing plant shall afford free
6 access to every part of the premises and render all aid and
7 assistance necessary to enable the regulatory authority to make
8 a thorough and complete inspection. As part of the inspection
9 process, the regulatory authority shall provide an explanation
10 of the violation or violations cited and provide guidance as
11 to actions for correction and elimination of the violation
12 or violations. The regulatory authority shall document the
13 violations as it deems appropriate. A food establishment or
14 food processing plant being inspected pursuant to this section
15 shall provide the regulatory authority with access to records
16 necessary to determine compliance with this chapter and rules
17 adopted pursuant to this chapter. The regulatory authority may
18 take food or environmental samples as necessary to determine
19 compliance with this chapter and rules adopted pursuant to this
20 chapter.

21 Sec. 25. Section 137F.11, Code 2016, is amended to read as
22 follows:

23 **137F.11 Inspection upon complaint.**

24 Upon receipt of a complaint ~~by a customer of a food~~
25 ~~establishment or food processing plant~~ stating facts indicating
26 the premises ~~are in an unsanitary condition~~ of a food
27 establishment or food processing plant are not in compliance
28 with this chapter or the rules adopted pursuant to this
29 chapter, the regulatory authority may conduct an inspection.
30 The regulatory authority shall keep the name of the person
31 making the complaint confidential upon that person's request.

32 Sec. 26. REPEAL. Section 137F.17, Code 2016, is repealed.

33 EXPLANATION

34 The inclusion of this explanation does not constitute agreement with
35 the explanation's substance by the members of the general assembly.

1 This bill relates to food and consumer safety by changing
2 requirements for the hotel sanitation, home food establishment,
3 food establishment and food processing plants Code chapters.

4 Division I of the bill changes the information the local
5 board of health responsible for enforcing the Iowa hotel
6 sanitation code is required to provide to the director of
7 the department of inspections and appeals regarding the
8 hotel licenses granted in the year. The division requires a
9 regulatory authority, meaning the department of inspections and
10 appeals or a local board of health, in conducting inspections
11 of hotels to do so in accordance with rules adopted by the
12 department of inspections and appeals. The division provides
13 that licensees may be subject to a penalty of 10 percent of
14 the license fee per month rather than a flat 10 percent upon
15 failure to renew a license on or before the expiration date.
16 The division also changes the license fee schedule for hotel
17 licenses. The division provides that if anyone, rather than
18 just a guest of a hotel, files a complaint that the premises
19 is unsanitary, the regulatory authority must conduct an
20 inspection.

21 Division II of the bill changes the term "home food
22 establishment" to "home bakery". The division provides that
23 the term "prepared food" for purposes of the home bakeries
24 Code chapter means baked goods that are time and temperature
25 controlled for food safety rather than hazardous baked goods.
26 The division increases the fee for a home bakery license from
27 \$33.75 to \$50.

28 Division III of the bill relates to food establishments
29 and food processing plants. The division eliminates a food
30 service operation in the Iowa juvenile home from the definition
31 of food establishment. The division adds a definition for
32 "time/temperature control for safety food" and replaces
33 references to potentially hazardous food with this phrase.
34 The division defines the term "event" as a significant
35 occurrence or happening sponsored by a civic, business,

1 educational, governmental, community, or veterans organization
2 and may include athletic contests. The division modifies
3 the definitions of "vending machine" and "vending machine
4 location".

5 The division eliminates the annual report a municipal
6 corporation responsible for enforcing the food establishments
7 and food processing plants Code chapter must provide the
8 director of inspections and appeals, but requires the municipal
9 corporation to use the data system prescribed by the director.

10 The division requires a food establishment or food
11 processing plant seeking licensure under the Code chapter to
12 renew prior to the time of the expiration of licensure or
13 within 60 days of the expiration date.

14 The division adds a \$250 general application fee
15 for licensure under the Code chapter. This general
16 application fee does not apply to farmers markets, temporary
17 food establishments for a single event, temporary food
18 establishments for multiple nonconcurrent events, or vending
19 machines. However, the division requires a person conducting
20 an event to submit an application and a \$50 application fee
21 to the appropriate regulatory authority 60 days prior to the
22 event. For purposes of this application and application fee,
23 an "event" does not include a fair as defined in Code section
24 174.1 or a farmers market with 10 or more temporary food
25 establishments.

26 The division changes the license fee schedule for mobile
27 food units or pushcarts, temporary food establishments
28 per fixed location for a single event, temporary food
29 establishments for multiple nonconcurrent events, vending
30 machines, food establishments which prepare or serve food for
31 individual portion service intended for consumption on the
32 premises, food establishments which sell food or food products
33 intended for consumption off the premises, food processing
34 plants, and farmers markets. The division adds new categories
35 of license fees for schools with production kitchens or serving

1 sites and for certificates of free sale or sanitation.

2 The division provides that the regulatory authority
3 must document violations during regular inspections as it
4 deems appropriate. The division also states that a food
5 establishment or food processing plant being inspected shall
6 provide the regulatory authority access to records necessary to
7 determine compliance and the regulatory authority may take food
8 or environmental samples.

9 The division provides that if any person, rather than
10 a customer, files a complaint that the premises of a food
11 establishment or food processing plant are not in compliance
12 with the food establishments and food processing plants Code
13 chapter, the regulatory authority may conduct an inspection.
14 The bill allows the person filing the complaint to keep their
15 name confidential.

16 The division repeals the Code section subjecting persons in
17 violation of the food establishments and food processing plants
18 Code chapter to a \$100 penalty.