

House File 2431 - Reprinted

HOUSE FILE 2431
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO HF 2005)

(As Amended and Passed by the House March 10, 2022)

A BILL FOR

1 An Act relating to the regulation of home-based businesses,
2 including food establishments and home food processing
3 establishments, and providing civil penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 10A.104, subsection 11, Code 2022, is
2 amended to read as follows:

3 11. Administer inspections and licensing of hotels and home
4 ~~bakeries~~ food processing establishments.

5 Sec. 2. Section 137D.1, Code 2022, is amended to read as
6 follows:

7 **137D.1 Definitions.**

8 As used in this chapter, unless the context otherwise
9 requires:

10 1. ~~"Food" means any raw, cooked, or processed edible~~
11 ~~substance, ice, beverage, or ingredient used or intended for~~
12 ~~use or sale in whole or in part for human consumption.~~

13 2. ~~"Department" means the department of inspections and~~
14 ~~appeals.~~

15 1. "Department" means the department of inspections and
16 appeals.

17 2. "Food" means any raw, cooked, or processed edible
18 substance, ice, beverage, or ingredient used or intended for
19 use or sale in whole or in part for human consumption.

20 3. "Home bakery food processing establishment" means a
21 business on the premises of a residence in which ~~prepared~~
22 homemade food ~~is created~~ items are produced for sale or
23 resale, for consumption off the premises, if the business has
24 gross annual sales ~~of prepared food~~ of less than ~~thirty-five~~
25 fifty thousand dollars. However, "home bakery food processing
26 establishment" does not include a residence in which food is
27 prepared to be used or sold by churches, fraternal societies,
28 charitable organizations, or civic organizations.

29 4. ~~"Prepared food" means soft pies, bakery products~~
30 ~~with a custard or cream filling, or baked goods that are a~~
31 ~~time/temperature control for safety food. "Prepared food" does~~
32 ~~not include baked goods that are not a time/temperature control~~
33 ~~for safety food, including but not limited to breads, fruit~~
34 ~~pies, cakes, or other pastries that are not a time/temperature~~
35 ~~control for safety food. "Homemade food item" means a food~~

1 that is produced and, if packaged, packaged at a home food
2 processing establishment. "Homemade food item" includes food
3 that is not time/temperature control for safety food, but
4 does not include such food if produced and sold under section
5 137F.20. "Homemade food item" does not include unpasteurized
6 fruit or vegetable juice, raw sprout seeds, foods containing
7 game animals, fish or shellfish, alcoholic beverages,
8 bottled water, packaged ice, consumable hemp products, food
9 that will be further processed by a food processing plant,
10 time/temperature control for safety food packaged using
11 a reduced oxygen packaging method, milk or milk products
12 regulated under chapter 192, and meat, meat food products,
13 poultry, or poultry products regulated under chapter 189A,
14 except for any of the following products when sold directly to
15 the end consumer:

16 a. Poultry, poultry byproduct, or poultry food product
17 if the producer raised the poultry pursuant to the exemption
18 set forth in 9 C.F.R. §381.10(c)(1) limiting the producer to
19 slaughtering not more than one thousand poultry during the
20 calendar year.

21 b. Poultry, poultry byproduct, or poultry food product if
22 the poultry is from an inspected source exempted pursuant to 9
23 C.F.R. §381.10(d).

24 c. Meat, meat byproduct, or meat food product if the meat
25 is from an inspected source exempted pursuant to 9 C.F.R.
26 §303.1(d).

27 5. "Produce", with respect to preparing homemade food
28 items, means to prepare a food item by cooking, baking,
29 drying, mixing, cutting, fermenting, preserving, freezing,
30 dehydrating, growing, raising, or other process. "Produce"
31 does not include the preparation methods of low-acid canning,
32 low-acid fermentation, acidification, curing, and smoking for
33 preservation rather than flavor enhancement.

34 5. 6. "Time/temperature control for safety food" means a
35 food that requires time and temperature controls for safety to

1 limit pathogenic microorganism growth or toxin formation.

2 Sec. 3. Section 137D.2, Code 2022, is amended to read as
3 follows:

4 **137D.2 Licenses and inspections.**

5 1. A person shall not open or operate a home ~~bakery food~~
6 processing establishment until a license has been obtained from
7 the department ~~of inspections and appeals~~. The department
8 shall collect a fee of fifty dollars for a license. After
9 collection, the fees shall be deposited in ~~the general fund of~~
10 a special fund in the state treasury. Moneys in the fund are
11 appropriated to the department for the administration of this
12 chapter. A license shall expire one year from date of issue.
13 A license is renewable.

14 2. A person shall not sell or distribute from a home
15 ~~bakery food processing establishment~~ if the home ~~bakery food~~
16 processing establishment is unlicensed, the license of the
17 home ~~bakery food processing establishment~~ is suspended, or
18 the food fails to meet standards adopted for such food by the
19 department.

20 3. An application for a license under ~~this chapter~~ shall be
21 made upon a form furnished by the department and shall contain
22 the items required by ~~it~~ the department according to rules
23 adopted by the department.

24 4. The department shall regulate, license, and inspect
25 home ~~bakeries according to standards adopted by rule~~ food
26 processing establishments in a manner that is consistent with
27 this chapter.

28 5. The department shall provide for the periodic inspection
29 of a home ~~bakery food processing establishment~~. The inspector
30 may enter the home ~~bakery food processing establishment~~ at any
31 reasonable hour to make the inspection. The department shall
32 inspect only those areas related to preparing food for sale.

33 6. The department shall regulate and may inspect food
34 prepared at a home ~~bakery according to standards adopted~~
35 by rule food processing establishment in a manner that is

1 consistent with this chapter. The inspection may occur at any
2 place where ~~the prepared food~~ a homemade food item is created,
3 transported, or stored for sale or resale.

4 7. A home food processing establishment shall affix or label
5 a homemade food item with all of the following information:

6 a. Information to identify the name of the home food
7 processing establishment.

8 b. The common name of the food.

9 c. The ingredients of the homemade food item in descending
10 order of predominance.

11 d. The net quantity of contents.

12 e. For refrigerated time/temperature control for safety
13 foods, an expiration date based on food safety.

14 f. The following statement: "This product was produced at
15 a home food processing establishment." If the homemade food
16 item contains one or more major food allergens, an additional
17 allergen statement must be included on the label identifying
18 each major allergen contained in the food by the common name of
19 the allergen.

20 8. The department may adopt rules under chapter 17A to
21 administer this chapter.

22 Sec. 4. Section 137D.3, Code 2022, is amended to read as
23 follows:

24 **137D.3 Penalty.**

25 A person who violates a provision of **this chapter**, including
26 a standard adopted by departmental rule, relating to home
27 ~~bakeries~~ food processing establishments or ~~prepared foods~~
28 ~~created~~ homemade food items produced in a home ~~bakery~~, is
29 ~~guilty of a simple misdemeanor~~ food processing establishment
30 shall be subject to a civil penalty in the amount of one
31 hundred dollars per violation, to be collected by the
32 department. Moneys collected from civil penalties shall be
33 deposited in the special fund referred to in section 137D.2.
34 Each day that the violation continues constitutes a separate
35 offense violation.

1 Sec. 5. Section 137D.4, Code 2022, is amended to read as
2 follows:

3 **137D.4 Injunction.**

4 A person operating a home ~~bakery~~ food processing
5 establishment or selling ~~prepared foods~~ homemade food items
6 created at a home ~~bakery~~ food processing establishment in
7 violation of a provision of **this chapter** may be restrained
8 by injunction from further operating that home ~~bakery~~ food
9 processing establishment. If an imminent health hazard exists,
10 the home ~~bakery~~ food processing establishment must cease
11 operation and notify the department. Operation shall not be
12 resumed until authorized by the department.

13 Sec. 6. Section 137D.6, Code 2022, is amended to read as
14 follows:

15 **137D.6 Conflicts with state building code.**

16 Provisions of **this chapter**, including standards for home
17 ~~bakeries~~ food processing establishments adopted by the
18 department, in conflict with the state building code, as
19 adopted pursuant to **section 103A.7**, shall not apply where the
20 state building code has been adopted or when the state building
21 code applies throughout the state.

22 Sec. 7. Section 137D.8, Code 2022, is amended to read as
23 follows:

24 **137D.8 Suspension or revocation of licenses.**

25 The department may suspend or revoke a license issued to a
26 person under **this chapter** if any of the following occurs:

27 1. The person's home ~~bakery~~ food processing establishment
28 does not conform to a provision of **this chapter** or a rule
29 adopted pursuant to **this chapter**.

30 2. The person violates a provision of **this chapter** or a rule
31 adopted pursuant to **this chapter**.

32 3. The person conducts an activity constituting a criminal
33 offense in the home ~~bakery~~ food processing establishment and is
34 convicted of a serious misdemeanor or a more serious offense
35 as a result.

1 Sec. 8. Section 137F.1, Code 2022, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 2A. *“Cottage food”* means the production
4 and sale of food produced at a private residence other than
5 time/temperature control for safety food as provided in section
6 137F.20 and food for resale that is not time/temperature
7 control for safety food. *“Cottage food”* includes home-processed
8 and home-canned pickles, vegetables, or fruits that have a
9 finished equilibrium pH value of four and six-tenths or lower
10 or a water activity value of eighty-five hundredths or less for
11 which each batch has been measured by a pH meter or a water
12 activity meter and each container that is sold or offered for
13 sale contains the date the food was processed and canned.
14 *“Cottage food”* does not include any of the following:

15 a. Milk or milk products regulated under chapter 192.

16 b. Meat, meat food products, poultry, or poultry food
17 products regulated under chapter 189A.

18 Sec. 9. Section 137F.1, subsection 8, paragraphs d, e, and
19 f, Code 2022, are amended to read as follows:

20 d. Premises ~~which~~ that are a home ~~bakery pursuant to food~~
21 processing establishment as defined in chapter 137D.

22 e. Premises where a person operates a farmers market, if
23 unpackaged time/temperature control for safety foods are not
24 sold or distributed from the premises.

25 f. Premises of a residence in which food ~~that is not~~
26 ~~a time/temperature control for safety food is sold for~~
27 ~~consumption off the premises to a consumer customer, if the~~
28 ~~food is labeled to identify the name and address of the person~~
29 ~~preparing the food and the common name of the food~~ is produced
30 pursuant to section 137F.20.

31 Sec. 10. NEW SECTION. 137F.20 **Cottage food — requirements.**

32 1. Cottage food is exempt from all licensing, permitting,
33 inspection, packaging, and labeling laws of the state if the
34 food is sold and delivered by the producer directly to the
35 consumer, or delivered by mail or an agent of the producer such

1 as an employee. A producer may sell food to the consumer in
2 person, remotely, by telephone, by internet, or by an agent of
3 the producer.

4 2. Cottage food sold pursuant to this section shall be
5 affixed or labeled with all of the following information:

6 a. Information to identify the name and address, phone
7 number, or electronic mail address of the person preparing the
8 food.

9 b. The common name of the food.

10 c. The ingredients of the cottage food in descending order
11 of predominance.

12 d. The following statement: "This product was produced
13 at a residential property that is exempt from state licensing
14 and inspection." If the cottage food contains one or more
15 major food allergens, an additional allergen statement must be
16 included on the label identifying each major allergen contained
17 in the food by the common name of the allergen.

18 e. If the food is home-processed and home-canned pickles,
19 vegetables, or fruits permitted under this section, the date
20 that the food was processed and canned.

21 3. Compliance with the cottage food exemption provided in
22 this section does not represent compliance with federal law.

23 Sec. 11. Section 210.23, Code 2022, is amended to read as
24 follows:

25 **210.23 Exception.**

26 Any person engaged in operating a home baking food
27 processing establishment is exempt from the provisions of
28 sections 210.19 through 210.22.

29 Sec. 12. NEW SECTION. **335.35 Home-based businesses.**

30 1. For purposes of this section:

31 a. "Goods" means any merchandise, equipment, products,
32 supplies, or materials.

33 b. "Home-based business" means any business for the
34 manufacture, provision, or sale of goods or services that is
35 owned and operated by the owner or tenant of the residential

1 property on which the business operates.

2 *c.* "No-impact home-based business" means a home-based
3 business for which all of the following apply:

4 (1) The total number of on-site employees and clients does
5 not exceed the county occupancy limit for the residential
6 property.

7 (2) The business activities are characterized by all of the
8 following:

9 (a) The activities are limited to the sale of lawful goods
10 and services.

11 (b) The activities do not generate on-street parking or a
12 substantial increase in traffic through the residential area.

13 (c) The activities occur inside the residential dwelling or
14 in the yard of the residential property.

15 (d) The activities are not visible from an adjacent property
16 or street.

17 2. The use of a residential property for a home-based
18 business is a permitted use. However, this subsection does not
19 supersede any of the following:

20 *a.* A deed restriction, covenant, or agreement restricting
21 the use of land.

22 *b.* A master deed, bylaw, or other document applicable to a
23 common interest ownership community.

24 3. A county shall not prohibit a no-impact home-based
25 business or otherwise require a person to apply, register, or
26 obtain any permit, license, variance, or other type of prior
27 approval from the county to operate a no-impact home-based
28 business.

29 4. A county may establish reasonable regulations on a
30 home-based business if the regulations are narrowly tailored
31 for any of the following purposes:

32 *a.* The protection of the public health and safety, including
33 rules and regulations related to fire or building codes, health
34 and sanitation, transportation or traffic control, solid or
35 hazardous waste, pollution, or noise control.

1 *b.* Ensuring that the business is all of the following:

2 (1) Compatible with residential use of the property and
3 surrounding residential use.

4 (2) Secondary to the use of the property as a residence.

5 (3) Complying with state and federal laws and paying
6 applicable taxes.

7 *c.* Limiting or prohibiting the operation of a home-based
8 business for the purposes of selling alcoholic beverages or
9 illegal drugs, operating or maintaining a structured sober
10 living home, creating or selling pornography, providing nude
11 or topless dancing, or operating any other adult-oriented
12 business.

13 5. A county shall not require as a condition of operating a
14 home-based business that the property be rezoned for commercial
15 use or that the business owner install or equip fire sprinklers
16 in a single-family detached residential dwelling or any
17 residential dwelling with not more than two dwelling units.

18 6. In any proceeding alleging that a county regulation
19 does not comply with this section, the county that enacted the
20 regulation must establish by clear and convincing evidence that
21 the regulation complies with this section.

22 Sec. 13. NEW SECTION. **414.33 Home-based businesses.**

23 1. For purposes of this section:

24 *a.* "*Goods*" means any merchandise, equipment, products,
25 supplies, or materials.

26 *b.* "*Home-based business*" means any business for the
27 manufacture, provision, or sale of goods or services that is
28 owned and operated by the owner or tenant of the residential
29 property on which the business operates.

30 *c.* "*No-impact home-based business*" means a home-based
31 business for which all of the following apply:

32 (1) The total number of on-site employees and clients
33 does not exceed the city occupancy limit for the residential
34 property.

35 (2) The business activities are characterized by all of the

1 following:

2 (a) The activities are limited to the sale of lawful goods
3 and services.

4 (b) The activities do not generate on-street parking or a
5 substantial increase in traffic through the residential area.

6 (c) The activities occur inside the residential dwelling or
7 in the yard of the residential property.

8 (d) The activities are not visible from an adjacent property
9 or street.

10 2. The use of a residential property for a home-based
11 business is a permitted use. However, this subsection does not
12 supersede any of the following:

13 a. A deed restriction, covenant, or agreement restricting
14 the use of land.

15 b. A master deed, bylaw, or other document applicable to a
16 common interest ownership community.

17 3. A city shall not prohibit a no-impact home-based business
18 or otherwise require a person to apply, register, or obtain any
19 permit, license, variance, or other type of prior approval from
20 the city to operate a no-impact home-based business.

21 4. A city may establish reasonable regulations on a
22 home-based business if the regulations are narrowly tailored
23 for any of the following purposes:

24 a. The protection of the public health and safety, including
25 rules and regulations related to fire or building codes, health
26 and sanitation, transportation or traffic control, solid or
27 hazardous waste, pollution, or noise control.

28 b. Ensuring that the business is all of the following:

29 (1) Compatible with residential use of the property and
30 surrounding residential use.

31 (2) Secondary to the use of the property as a residence.

32 (3) Complying with state and federal laws and paying
33 applicable taxes.

34 c. Limiting or prohibiting the operation of a home-based
35 business for the purposes of selling alcoholic beverages or

1 illegal drugs, operating or maintaining a structured sober
2 living home, creating or selling pornography, providing nude
3 or topless dancing, or operating any other adult-oriented
4 business.

5 5. A city shall not require as a condition of operating a
6 home-based business that the property be rezoned for commercial
7 use or that the business owner install or equip fire sprinklers
8 in a single-family detached residential dwelling or any
9 residential dwelling with not more than two dwelling units.

10 6. In any proceeding alleging that a city regulation
11 does not comply with this section, the city that enacted the
12 regulation must establish by clear and convincing evidence that
13 the regulation complies with this section.