HOUSE FILE 2431
BY COMMITTEE ON LOCAL
GOVERNMENT

(SUCCESSOR TO HF 2005)

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

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

An Act relating to the regulation of home-based [businesses, including food establishments and home food processing establishments, and providing civil penalties.]

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

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

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

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

137D.1 Definitions.

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

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

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

1. "*Department*" means the department of inspections and appeals.

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

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

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

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

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

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

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

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

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

limit pathogenic microorganism growth or toxin formation.

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

137D.2 Licenses and inspections.

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

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

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

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

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

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

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

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

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

b. The common name of the food.

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

d. The net quantity of contents.

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

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

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

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

137D.3 Penalty.

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

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

137D.4 Injunction.

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

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

137D.6 Conflicts with state building code.

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

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

137D.8 Suspension or revocation of licenses.

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

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

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

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

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

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

a. Milk or milk products regulated under chapter 192.

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

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

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

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

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

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

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

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

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

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

b. The common name of the food.

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

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

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

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

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

210.23 Exception.

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

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

1. For purposes of this section:

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

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

property on which the business operates.

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

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

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

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

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

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

(d) The activities are not visible from [an adjacent property or street.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. For purposes of this section:

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

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

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

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

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

following:

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

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

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

* (d) The activities are not visible from [an adjacent property or street.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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