

CHAPTER 1286
RADIATION MACHINES AND RADIOACTIVE MATERIALS
H.F. 2110

AN ACT relating to the regulation of radiation machines and radioactive materials and providing a civil penalty for violations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. **NEW SECTION. 136C.6 DUTIES.** The department is designated the state radiation control agency and is responsible for regulating the installation and use of radiation machines and the use of radioactive materials in this state as provided in this chapter. The department shall:

1. Establish minimum criteria and safety standards for the installation, operation, and use of radiation machines and radioactive materials.

2. Establish minimum training standards for operators of radiation machines and users of radioactive materials. A state of Iowa license to practice medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, or veterinary medicine satisfies the minimum training standards for operation of radiation machines only.

3. Develop programs for evaluation and control of hazards associated with the use of sources of radiation with due regard for compatibility of a proposed program with federal programs regulating byproduct, source, and special nuclear materials and considering consistency of a proposed program with federal programs for regulation of radiation machines.

4. Adopt, publish, and amend rules in accordance with chapter 17A as necessary for the implementation and enforcement of this chapter. The rules may provide for the licensing and control of radioactive materials with due regard for compatibility with federal regulatory programs.

5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials.

6. Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

7. Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

8. Collect and disseminate information relating to control of sources of radiation. The department shall maintain the following information on file:

a. License applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

b. A list of persons possessing sources of radiation requiring registration under this chapter and any administrative or judicial action involving each person.

c. Departmental rules relating to regulation of sources of radiation, existing or pending, and related actions.

9. Adopt rules requiring the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this chapter as the department determines necessary to effect the purposes of this chapter.

Sec. 2. NEW SECTION. 136C.7 ACCEPTANCE OF FUNDS. The department may accept from any source loans, grants, gifts, or other funds to be used for programs authorized by this chapter.

Sec. 3. NEW SECTION. 136C.8 INSPECTIONS. The department shall inspect all radiation machines and radioactive materials located in this state, for the purpose of detecting, abating, or eliminating excessive radiation exposure hazards. The inspection shall include but shall not be limited to an evaluation of the radiation machine or radioactive material as well as the immediate environment to ensure that in using the machines or materials all unnecessary hazards for patients, personnel, and other persons who may be exposed to radiation produced by the machine or materials are avoided. The inspection shall also include an evaluation of electrical hazards as well as the adequacy of mechanical supporting and restraining devices. All defects and deficiencies noted by the inspector shall be fully disclosed and discussed with the responsible persons at the time of inspection. The department shall establish rules prescribing operating procedures for radiation machines and radioactive materials which ensure minimum radiation exposure to patients, personnel, and other persons in the immediate environment.

Sec. 4. NEW SECTION. 136C.9 REGISTRATION AND LICENSE REQUIREMENTS.

1. The department shall establish by rule a system for the registration of the possession of radiation machines and for the licensing of radioactive materials in the state. The rules may provide for the issuance of the following licenses:

a. General licenses which do not require the filing of an application or the issuance of a document but do permit designated persons to transfer, acquire, own, possess or use quantities of or equipment using radioactive materials.

b. Specific licenses issued upon application to a person named in the license to use, manufacture, produce, transfer, receive, acquire, or possess quantities of or equipment using radioactive material.

2. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements when the department finds that the exemption of the source of radiation, use, or users will not pose a significant risk to the health and safety of the public. The rules may provide for recognition of other state or federal licenses as the department may allow, subject to registration requirements as the department may prescribe.

3. A person shall not use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any radioactive material without a license from the department as provided in this chapter.

Sec. 5. NEW SECTION. 136C.10 FEES. The department shall establish and collect fees for the licensing and amendment of licenses for radioactive materials, the registration of radiation machines, and the periodic inspection of radiation machines and radioactive materials. Fees shall be in amounts sufficient to defray the cost of administering this chapter. The license fee may include the cost of environmental surveillance activities to assess the radiological impact of activities conducted by licensees. Fees collected shall be remitted to the treasurer of state who shall deposit the funds in the general fund of the state. When a registrant or licensee fails to pay the applicable fee the department may suspend or revoke the registration or license or may issue an appropriate order. Fees for the license, amendment of a license, and inspection of radioactive material shall not exceed the fees prescribed by the United States nuclear regulatory commission.

Sec. 6. NEW SECTION. 136C.11 FEDERAL-STATE AGREEMENTS.

1. The governor, on behalf of the state, may enter into an agreement with the United States nuclear regulatory commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended to the effective date of this Act, providing for the discontinuation of certain federal licensing and related regulatory authority over byproduct, source, and special nuclear material and the assumption of regulatory authority over these materials by the state.

2. A person who, on the effective date of an agreement made under subsection 1, possesses a license issued by the United States nuclear regulatory commission for radioactive material that come under the agreement is considered to possess the license required under this chapter. The license shall expire either ninety days after receipt from the department of a notice of expiration of the license, or on the date of expiration specified in the license issued by the nuclear regulatory commission, whichever is earlier.

Sec. 7. NEW SECTION. 136C.12 CONFLICTING LAWS. This chapter does not preempt ordinances, resolutions, or rules of a local government or of a state agency relating to radioactive material that are consistent with this chapter. This chapter does not give the department the authority to regulate a facility for the disposal of low-level radioactive waste as defined in article II of section 8C.1.

Sec. 8. NEW SECTION. 136C.13 EMERGENCIES. If the department finds that an emergency exists involving radioactive material or radiation machines that requires immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order stating that an emergency exists and requiring that action be taken as necessary to meet the emergency. An emergency order shall be effective immediately. A person to whom the order is directed shall comply with the order immediately, but on application to the department shall be afforded a hearing within ten days of the date application is made. The emergency order may be continued, modified, or revoked within thirty days after the hearing, based on the evidence presented at the hearing.

Sec. 9. Chapter 136C, Code 1983, is amended by adding the following new section:

NEW SECTION. 136C.15 QUALIFIED OPERATORS—DISPLAY OF CREDENTIALS.

1. A person, other than a licensed professional, shall not operate equipment or use materials for medical treatment or diagnostic purposes unless that person has completed a course of instruction approved by the department or has otherwise met the minimum training established by the department.

2. A person, other than a licensed professional, who operates equipment or uses materials for medical treatment or diagnostic purposes shall display the credentials which indicate that person's qualification to operate equipment or use materials in the immediate vicinity of the equipment or where the materials are stored. A person who owns or controls the equipment or materials is also responsible for the proper display of credentials of those who operate the equipment or use the materials and shall not employ a person to operate equipment or use materials for medical treatment or diagnostic purposes except as provided in this section.

Sec. 10. Section 136C.1, Code 1983, is amended to read as follows:

136C.1 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of public health or a the commissioner's designee.

2. "Department" means the state department of health.

3. "Materials" means substances other than equipment which are capable of emitting radiation but does not include drugs as defined in chapter 203A.

3. "Decommissioning" means final operational activities at a site to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.

4. "Radiation" means energy forms capable of causing ionization including alpha particles, beta particles, gamma rays, X rays, neutrons, high-speed protons, and other atomic particles, but does not include sound or radio waves, or visible light, or infrared or ultraviolet light.

5. "Radiation machine" means a device capable of producing radiation except those that produce radiation solely from radioactive material.

6. "Radioactive material" means a solid, liquid, or gaseous material that emits radiation spontaneously including accelerator-produced and naturally occurring material, and byproduct, source, and special nuclear material as defined in the Atomic Energy Act of 1954 as amended to the effective date of this Act.

"Licensed professional" means a person licensed or otherwise authorized by law to practice medicine, osteopathy, podiatry, chiropractic, dentistry, dental hygiene, or veterinary medicine.

Sec. 11. Section 136C.2, Code 1983, is amended to read as follows:

136C.2 APPLICABILITY. The provisions of this This chapter apply applies to all equipment or materials which are radiation machines and radioactive material located in this state and which are designed to emit radiation. The provisions of this chapter shall do not supersede or duplicate the authority and programs of any other agency of the state or the United States government. To avoid duplication and promote coordination of radiation protection activities, the department may enter into agreements pursuant to chapter 28E with other state and federal agencies, or with private organizations or individuals, to administer the provisions of this chapter.

Sec. 12. Section 136C.4, Code 1983, is amended to read as follows:

136C.4 PENALTIES.

1. It is unlawful to operate or utilize use radiation emitting equipment or material machines or radioactive material in violation of the provisions of this chapter or of any rule adopted pursuant to this chapter. Persons convicted of violating the provisions a provision of this chapter shall be are guilty of a simple misdemeanor.

2. In addition to criminal penalties, the department may impose a civil penalty not to exceed one thousand dollars on a person who violates a provision of this chapter or a rule or order issued under this chapter, or a term, condition, or limitation of a license or registration certificate issued under this chapter, or who commits a violation for which a license or registration certificate may be revoked under rules issued pursuant to this chapter. Each day of continuing violation constitutes a separate offense in computing the civil penalty.

3. The department shall notify a person of the intent to impose a civil penalty against the person. The notice shall be by registered or certified mail to the person's last known address and shall state the date, facts, the nature of the act or omission leading to the charge, the specific statute, rule, or license or registration provision involved, and the amount of the penalty the department proposes to impose. The notice shall advise the person that upon failure to pay the civil penalty, the penalty may be collected by civil action. The person shall have the opportunity to respond in writing, within a reasonable time as the department shall establish by rule, why the civil penalty should not be imposed.

4. The department may compromise, mitigate, or remit a civil penalty imposed under this section. A person upon whom a civil penalty is imposed may appeal the action pursuant to chapter 17A. The department shall remit moneys collected from civil penalties to the treasurer of state who shall deposit the moneys in the general fund of the state.

Sec. 13. Section 136C.5, Code 1983, is amended to read as follows:

136C.5 ENFORCEMENT.

1. Upon determination by the ~~commissioner~~ department that this chapter or any rule adopted pursuant to this chapter has been or is being violated, the ~~commissioner~~ department may order that the radiation emitting equipment or materials machine or radioactive material not be used until the necessary corrective action has been taken. ~~Should the equipment or materials continue to be used~~ If the use of the radiation machine or radioactive material continues in violation of the order of the ~~commissioner~~ department, the ~~commissioner~~ department may request the county attorney or the attorney general to make an application in the name of the state to the district court of the county in which the violations may have occurred for an order to enjoin ~~such~~ the violations or practices.

2. The department may impound or order the impounding of radioactive material in the possession of a person who is not equipped to observe or fails to observe a provision of this chapter or of a rule adopted under this chapter.

3. The department may enter at reasonable times any private or public property to determine whether there is a violation of a provision of this chapter or of a rule issued under this chapter. However, the department must have the consent of the federal government before entering an area under the jurisdiction of the federal government.

4. The department may inspect records required to be kept under section 136C.6, subsection 9. Upon request of the department a person shall submit the records to the department for inspection.

Sec. 14. Section 136C.3, Code 1983, is repealed.

Approved May 16, 1984