

1983 Assembly Bill 604

Date of enactment: April 18, 1984
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1983 Wisconsin Act 203

AN ACT to repeal 50.53 (7) (d) and 140.05 (21); to renumber 50.50 (1) (intro.), 50.53 (1) and (2), 50.53 (3) (a), 50.53 (3) (b), (4) and (5) and 140.05 (17) (figure); to renumber and amend 50.50 (1) (a), 50.50 (2), (3), (4), (5), (6), (7), (8), (9) and (10), 50.51 (3), 50.53 (6), 50.53 (7) (a), 50.53 (7) (b) and (c), 50.53 (7) (e), 50.53 (8) and 97.28 (2); to amend 50.50 (intro.), 50.51 (1) and (2), 50.51 (4) and (5), 50.54, 50.55, 50.57, 50.59, 50.70, 93.06 (8), 97.20 (6), 97.26 (1), 97.26 (3), 97.28 (1), 97.28 (3) to (8), 97.36, 97.38, 97.40 (1), (2) and (3) and 140.05 (17) (intro.); to repeal and recreate 97.26 (2); and to create 50.505 (title), 50.51 (1p), 50.51 (3), 50.515 (title), 50.53 (1) (intro.) and (2) (intro.), 50.535 (title), (1) (title) and (2), 50.57 (1) (e) and (2), 50.575, 66.124, 97.28 (2), 97.28 (6m), 97.41 and 97.415 of the statutes, relating to authorizing cities and counties to be designated as agents of the department of health and social services and the department of agriculture, trade and consumer protection for inspecting and issuing permits and licenses to certain establishments, authorizing city and county regulation of those establishments, authorizing the department of health and social services and cities and counties to issue temporary orders and final decisions and orders regarding immediate health dangers, providing for a study, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.50 (intro.) of the statutes is amended to read:

50.50 Definitions. (intro.) ~~As used in~~ In this chapter subchapter:

SECTION 2. 50.50 (1) (intro.) of the statutes is renumbered 50.50 (3).

SECTION 3. 50.50 (1) (a) of the statutes is renumbered 50.505 and amended to read:

50.505 ~~The department may classify any hotel as herein defined as a "motel" on~~ Upon the written request of the hotel operator made on forms furnished by the department, ~~provided that the department may classify a hotel as a "motel", if the operator of the hotel furnishes on-premise parking facilities for the motor vehicles of the hotel guests as a part of the room charge, without extra cost.~~

SECTION 4. 50.50 (2), (3), (4), (5), (6), (7), (8), (9) and (10) of the statutes are renumbered 50.50 (6), (5), (7), (9), (10), (8), (4), (1) and (2), and 50.50 (5), (6), (7) and (8), as renumbered, are amended to read:

50.50 (5) "Restaurant" means any building, room or place ~~wherein~~ where meals or lunches are prepared or served or sold to transients or the general public, and all places used in connection ~~therewith~~ with it. "Meals or lunches" ~~shall~~ does not include soft drinks, ice cream, milk, milk drinks, ices and confections. The serving in taverns of free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or

bread and butter ~~shall or the serving of food or beverage through a licensed vending machine does not constitute such taverns to be restaurants.~~ The term “restaurant” the operation of a restaurant. “Restaurant” does not apply to include churches, religious, fraternal, youths’ or patriotic organizations, service clubs and civic organizations which occasionally prepare or serve or sell meals or lunches to transients or the general public ~~nor shall it include,~~ any public or private school lunchroom, or a private individual selling foods from a movable or temporary stand at public farm sales.

(6) “Tourist rooming house” means ~~and includes all any lodging places and tourist cabins and cottages place or tourist cabin or cottage,~~ other than hotels, wherein a hotel, where sleeping accommodations are offered for pay to tourists or transients. It ~~is~~ “Tourist rooming house” does not include a private boarding or rooming houses house, ordinarily conducted as such, not accommodating tourists or transients.

(7) “Vending machine” ~~as used in this chapter~~ means any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. ~~The term “vending machine” shall~~ “Vending machine” does not include ~~devices a device which dispense dispenses only bottled or,~~ prepackaged or canned soft drinks ~~or, a one cent vending devices or device,~~ a vending machines machine dispensing only candy, gum, nuts, nut meats, cookies or crackers, ~~nor shall it apply to or a vending machine dispensing only prepackaged Grade A pasteurized milk or milk products. Bulk milk dispensers may be operated in a restaurant licensed by the department without an additional vending machine or vending machine operator permit being required. The serving of food or beverage through a licensed vending machine shall not constitute the operation of a restaurant.~~

(8) “Vending machine commissary” means any building, room or place ~~in the state at which where~~ the food, beverage, ingredients, containers, transport equipment or supplies for vending machines are kept, handled, prepared or stored by a vending machine operator. ~~A licensed restaurant may be operated as a vending machine commissary without a vending machine commissary permit. A vending “Vending machine commissary”~~ does not mean any place at which the operator is licensed to manufacture, distribute or sell food products under ch. 97.

SECTION 5. 50.505 (title) of the statutes is created to read:

50.505 (title) Motels.

SECTION 6. 50.51 (1) and (2) of the statutes are amended to read:

50.51 (1) No person ~~shall~~ may conduct, maintain, manage or operate a hotel, restaurant, tourist rooming house, vending machine commissary or vending machine as defined in s. 50.50 ~~who if the person~~ has not been issued an annual permit by the department or by a county or a city which is granted agent status under s. 50.535 (2).

(2) Except as provided in sub. (3):

(a) A separate permit shall be required for each type of establishment as defined in s. 50.50.

SECTION 6m. 50.51 (1m) of the statutes is created to read:

50.51 (1m) No county, city, village or town may require any permit of, or impose any permit or inspection fee on, a vending machine operator, vending machine commissary or vending machine permitted under this subchapter.

SECTION 6p. 50.51 (1p) of the statutes is created to read:

50.51 (1p) The issuance of a permit may be conditioned upon the permittee correcting a violation of this subchapter, rules promulgated by the department under this subchapter or ordinances adopted under s. 50.535 (2) (g), within a specified period of time. If the condition is not met within the specified period of time, the permit shall be void.

SECTION 7. 50.51 (3) of the statutes is renumbered 50.51 (2) (b) and amended to read:

50.51 (2) (b) A separate permit shall be required for each establishment ~~excepting where, except that if~~ more than one establishment of the same type is operated on the same premises and under the same management a single permit for each type of establishment shall suffice.

SECTION 8. 50.51 (3) of the statutes is created to read:

50.51 (3) (a) A bulk milk dispenser may be operated in a restaurant without a vending machine or vending machine operator permit.

(b) A restaurant may operate as a vending machine commissary without a vending machine commissary permit.

SECTION 9. 50.51 (4) and (5) of the statutes are amended to read:

50.51 (4) ~~Permits shall not be~~ No permit is transferable from one premise to another or from one person to another, except that a permit for a “temporary restaurant” as defined by the department may be transferred to a premise other than that for which it was issued, ~~provided that if, prior to operation of the temporary restaurant at the new premise, approval of the new premise is secured from a department representative prior to operation of the temporary restaurant at the new premise or, if the new premise is located in a city or county granted agent status for the premise under s. 50.535 (2), from the city or county.~~

(5) All permits shall expire on June 30.

SECTION 10. 50.515 (title) of the statutes is created to read:

50.515 (title) Preinspection.

SECTION 11. 50.53 (1) and (2) of the statutes are renumbered 50.53 (1) (a) and (b).

SECTION 12. 50.53 (1) (intro.) and (2) (intro.) of the statutes are created to read:

50.53 (1) (intro.) Except as provided in s. 50.535 (2) (d) and (e):

(2) (intro.) Except as provided in s. 50.535 (2) (d):

SECTION 13. 50.53 (3) (a) of the statutes, as affected by 1983 Wisconsin Act 27, is renumbered 50.53 (1) (c).

SECTION 14. 50.53 (3) (b), (4) and (5) of the statutes are renumbered 50.53 (1) (d), (e) and (f).

SECTION 15. 50.53 (6) of the statutes is renumbered 50.535 (1) and amended to read:

50.535 (1) In the administration and enforcement of this ~~chapter~~ subchapter, the department may use cities or counties as its agents in making inspections and investigations of vending machine commissaries, vending machine operators and vending machines. When the designation is made and the services are furnished, the department shall reimburse the city or county furnishing the service at the rate of ~~85%~~ 80% of the net license fee per license per year issued in the municipality.

SECTION 16. 50.53 (7) (a) of the statutes is renumbered 50.515 (1) and amended to read:

50.515 (1) The department ~~shall~~ or a city or county granted agent status under s. 50.535 (2) may not grant a permit to a person intending to operate a new hotel, tourist rooming house or, restaurant or vending machine commissary or to a person intending to be the new operator of an existing hotel, tourist rooming house or, restaurant or vending machine commissary without a preinspection. This section does not apply to a “temporary restaurant” as defined by rule of the department.

SECTION 17. 50.53 (7) (b) and (c) of the statutes are renumbered 50.53 (2) (a) and (b) and amended to read:

50.53 (2) (a) The preinspection fee for a restaurant, vending machine commissary or a hotel shall be is \$45.25.

(b) The preinspection fee for a tourist rooming house shall be is \$18.

SECTION 18. 50.53 (7) (d) of the statutes is repealed.

SECTION 19. 50.53 (7) (e) of the statutes is renumbered 50.515 (2) and amended to read:

50.515 (2) Agents designated by the department under ~~sub. (6)~~ s. 50.535 (1) shall make preinspections of vending machine commissaries as required under this subsection and shall be reimbursed for those services at the rate of ~~85%~~ 80% of the preinspection fee designated in this subsection. Agents designated by the department under s. 50.535 (2) shall make preinspections of hotels, restaurants and tourist rooming houses and establish and collect preinspection fees under s. 50.535 (2) (d).

SECTION 20. 50.53 (8) of the statutes is renumbered 50.53 (3) and amended to read:

50.53 (3) A ~~Except as provided in s. 53.535 (2) (d) and this subsection, a~~ fee of \$5 is required to issue any duplicate permit, ~~except that the~~. The fee for a duplicate vending machine operator's permit or vending machine permit is \$1.

SECTION 21. 50.535 (title), (1) (title) and (2) of the statutes are created to read:

50.535 (title) Agent status for cities and counties. (1) (title) VENDING OPERATIONS.

(2) HOTELS, RESTAURANTS, TOURIST ROOMING HOUSES AND OTHER ESTABLISHMENTS. (a) In the administration of this subchapter or s. 140.05 (17), the department may enter into a written agreement with a city or county which designates the city or county as its agent in issuing permits to and making investigations or inspections of hotels, restaurants, tourist rooming houses, campgrounds and camping resorts, recreational and educational camps, mobile home parks and public swimming pools. When the designation is made, no permit other than the permit issued by the city or county under this subsection may be required for the same operations by the department, the city or the county. The department shall coordinate the designation of agents under this subsection with the department of agriculture, trade and consumer protection to ensure that, to the extent feasible, the same city and county agencies are granted agent status under this subsection and under s. 97.41. Except as otherwise provided by the department, a city or county granted agent status shall regulate all types of establishments for which this subchapter permits the department to delegate regulatory authority.

(b) A city or county granted agent status under this subsection shall meet standards adopted, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each city or county granted agent status. If, at any time, a city or county granted agent status fails to meet the standards, the department may revoke its agent status.

(c) The department shall provide education and training to agents designated under this subsection to ensure uniformity in the enforcement of this subchapter, s. 140.05 (17) and rules adopted under this subchapter and s. 140.05 (17).

(d) Except as provided in par. (dm), a city or county granted agent status under this subsection shall establish and collect the permit fee for each type of establishment. The city or county may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate permits. No fee may exceed the city's or county's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under par. (e). A city or county granted agent status under this subsection or under s. 97.41 may issue a single permit and establish and collect a single

fee which authorizes the operation on the same premises of more than one type of establishment for which it is granted agent status under this subsection or under s. 97.41.

(dm) A city or county granted agent status under this subsection may contract with the department for the department to collect fees and issue permits. The department shall collect from the city or county the actual and reasonable cost of providing the services.

(e) The department shall establish state fees for its costs related to setting standards under this subchapter and s. 140.05 (17) and monitoring and evaluating the activities of, and providing education and training to, agent cities and counties. Agent cities and counties shall include the state fees in the permit fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the permit fees charged under ss. 50.53 and 140.05 (17) in cities and counties where the department issues permits.

(f) If, under this subsection, a city or county becomes an agent or its agent status is discontinued during a permittee's permit year, the department and the city or county shall divide any permit fee paid by the permittee for that permit year according to the proportions of the permit year occurring before and after the city's or county's agent status is granted or discontinued. No additional fee may be required during the permit year due to the change in agent status.

(g) A city or county may enact ordinances or rules regarding the permittees and premises for which it is the designated agent under this subsection, which are stricter than this subchapter, s. 140.05 (17) or rules adopted by the department under this subchapter or s. 140.05 (17). No such provision may conflict with this subchapter or with department rules.

(h) This subsection does not limit the authority of the department to inspect establishments in cities and counties where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the city's or county's licensing, inspection and enforcement program or at the request of the city or county.

(j) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

1. A permit fee established by a city or county granted agent status exceeds the reasonable costs described under par. (d).

2. The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

SECTION 22. 50.54 of the statutes is amended to read:

50.54 Application. (1) An applicant for a ~~hotel, tourist rooming house, restaurant, vending machine commissary, vending machine operator or vending machine~~ permit under this subchapter shall complete an the application furnished prepared by the department or the city or county granted agent status under s. 50.535 (2) and provide such, in writing, any additional information as it the department or city or county issuing the permit requires.

(2) Upon receipt of an application for a vending machine operator permit, the department may cause an investigation to be made of the applicant's commissary, servicing and transport facilities, if any, and representative machines and machine locations. The operator shall maintain at his or her place of business within this state a list of all vending machines operated by him or her and their location. This information shall be kept current and shall be made available to the department upon request. The operator shall notify the department of any change in operations involving new types of vending machines or conversion of existing machines to dispense products other than those for which such machine was originally designed and constructed.

SECTION 23. 50.55 of the statutes is amended to read:

50.55 Rules of health and safety. Every hotel, tourist rooming house, restaurant, vending machine commissary and vending machine shall be operated and maintained with a strict regard to the public health and safety and in conformity with this ~~chapter~~ subchapter and the rules and orders of the department.

SECTION 24. 50.57 of the statutes is amended to read:

50.57 (title) Powers of department, counties and cities. (1) The department shall appoint assistants with such qualifications as it deems necessary and fix their compensation, administer do all of the following:

(a) Administer and enforce the rules and the this subchapter, the rules adopted under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, restaurants, vending machine commissaries, vending machines and vending machine locations, ascertain,

(b) Require hotels, tourist rooming houses, restaurants, vending machine operators and vending machine commissaries to file reports and information the department deems necessary.

(c) Ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety therein, prescribe on those premises.

(d) Prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of the vending machine commissary and vending machines and their location and servicing, and enforce such rules and laws premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment.

SECTION 24m. 50.57 (1) (e) and (2) of the statutes are created to read:

50.57 (1) (e) Hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in a city or county not granted agent status under s. 50.535 appeals to the department alleging that a permit fee for a hotel, restaurant, tourist rooming house, campground, camping resort, recreational or educational camp, mobile home park or public swimming pool exceeds the permit issuer's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishment.

(2) A county or city designated as an agent under s. 50.535 (2) may exercise the powers specified in sub. (1) (a) to (d), consistent with s. 50.535 (2) (g).

SECTION 25. 50.575 of the statutes is created to read:

50.575 Enforcement. (1) The department may enter, at reasonable hours, any premises for which a permit is required under this subchapter or s. 140.05 (17) to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce this subchapter or s. 140.05 (17). If samples of food are taken, the department shall pay or offer to pay the market value of the samples taken. The department shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this subchapter, s. 140.05 (17) or rules adopted by the department under this subchapter or s. 140.05 (17).

(2) (a) Whenever, as a result of an examination, the department has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates, an immediate danger to health, the administrator of the division of the department responsible for public health may issue a temporary order and cause it to be

delivered to the permittee, or to the owner or custodian of the food, or to both. The order may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease other operations or methods of operation which create the immediate danger to health, or set forth any combination of these requirements. The administrator may order the cessation of all operations authorized by the permit only if a more limited order does not remove the immediate danger to health. Except as provided in par. (c), no temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14-day period, if necessary to complete the analysis or examination of samples, specimens or other evidence.

(b) No food described in a temporary order issued and delivered under par. (a) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the department, until the order has terminated or the time period specified in par. (a) has run out, whichever occurs first. If the department, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the permittee, owner or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

(c) If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the permittee, owner or custodian shall be notified within the effective period of the temporary order issued under par. (a). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under sub. (3), and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the department.

(3) A notice issued under sub. (2) (c) shall be accompanied by notice of a hearing, as provided in s. 227.07. The department shall hold a hearing no later than 15 days after the service of the notice, unless both parties agree to a later date. A final decision shall be issued under s. 227.10 within 10 days of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the permit only if a more limited order will not remove the immediate danger to health.

(4) A proceeding under this section, or the issuance of a permit for the premises after notification of procedures under this section, does not constitute a waiver by the department of its authority to rely on a violation of this subchapter, s. 140.05 (17) or any rule adopted under this subchapter or s. 140.05 (17) as the basis for any subsequent suspension or revocation of the permit or any other enforcement action arising out of the violation.

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not more than \$10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a department inspector, employe or agent in the performance of his or her duties under this section.

2. Gives false information to a department inspector, employe or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employe or agent.

SECTION 26. 50.59 of the statutes is amended to read:

50.59 Penalty. ~~Excepting s. 50.84, anyone violating~~ Anyone who violates this chapter subchapter, except s. 50.575 or 50.84, or any rule or regulation of the department hereunder adopted under this subchapter shall be fined not less than ~~\$25~~ \$100 nor more than ~~\$200~~ \$1,000; ~~and anyone failing.~~ Anyone who fails to comply with an order of the department hereunder under this subchapter except s. 50.575 shall forfeit ~~\$5~~ \$50 for each day of noncompliance after the order is served upon or directed to him ~~or her~~, and in case of action under s. 50.71, after lapse of a reasonable time after final determination.

SECTION 27. 50.70 of the statutes is amended to read:

50.70 Suspension or revocation of permit. The department or a county or city designated as an agent under s. 50.535 (2) may refuse or withhold issuance of a permit or may suspend or revoke a permit for violation of ~~any provision of this chapter~~ this subchapter or any rule, ~~regulation~~ ordinance or order of the department, ~~county or city~~.

SECTION 28. 66.124 of the statutes is created to read:

66.124 Order authority. (1) An employe or agent of a city or county designated by the department of health and social services under s. 50.535 (2) or the department of agriculture, trade and consumer protection under s. 97.41 may enter, at reasonable hours, any premises for which the city or county issues a permit under s. 50.535 (2) or 97.41 to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce subch. III of ch. 50, ch. 97 or s. 140.05 (17), relating to those premises. If samples of food are taken, the city or county shall pay or offer to pay the market value of those samples. The city, county, department of health and social services or department of agriculture, trade and consumer protection shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of subch. III of ch. 50, ch. 97 or s. 140.05 (17), rules adopted by the departments under those statutes, or regulations adopted by the city or county under s. 50.535 (2) (g) or 97.41 (7).

(2) (a) Whenever, as a result of an examination, the city or county has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation or method of operation of the premises or equipment used on the premises creates an immediate danger to health, the administrator of the city or county agency responsible for the city's or county's agent functions under s. 50.535 (2) or 97.41 may issue a temporary order and cause it to be delivered to the permittee, or to the owner or custodian of the food, or to both. The order may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease any other operation or method of operation which creates the immediate danger to health, or set forth any combination of these requirements. The administrator may order the cessation of all operations authorized by the permit only if a more limited order does not remove the immediate danger to health. Except as provided in par. (c), no temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14-day period, if necessary to complete the analysis or examination of samples, specimens or other evidence.

(b) No food described in a temporary order issued and delivered under par. (a) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the city or county, until the order has terminated or the time period specified in par. (a) has run out, whichever occurs first. If the city or county, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the permittee, owner or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

(c) If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the permittee, owner or custodian shall be notified within the effective period of the temporary order issued under par. (a). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under sub. (3), and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the city or county.

(3) A notice issued under sub. (2) (c) shall be accompanied by notice of a hearing as provided in s. 68.11 (1). The city or county shall hold a hearing no later than 15 days after the service of the notice, unless both parties agree to a later date. Notwithstanding s. 68.12, a final decision shall be issued under s. 68.12 within 10 days of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the permit only if a more limited order will not remove the immediate danger to health.

(4) A proceeding under this section, or the issuance of a permit for the premises after notification of procedures under this section, does not constitute a waiver by the city or county of its authority to rely on a violation of subch. III of ch. 50, ch. 97 or s. 140.05 (17) or any rule adopted under those statutes as the basis for any subsequent suspension or revocation of the permit or any other enforcement action arising out of the violation.

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not more than \$10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a city or county inspector, employe or agent in the performance of his or her duties under this section.

2. Gives false information to a city or county inspector, employe or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employe or agent.

SECTION 28m. 93.06 (8) of the statutes is amended to read:

93.06 (8) PRESCRIBE CONDITIONS OF LICENSES. Any permit, certificate, registration or license may be conditioned upon pertinent circumstance or act. If the permit, certificate, registration or license is conditioned upon correcting a violation of chs. 93 to 100, a rule promulgated by the department under chs. 93 to 100 or a regulation adopted under s. 97.41 (7) within a specified period of time and the condition is not met within the specified period, the permit, certificate, registration or license shall be void.

SECTION 29. 97.20 (6) of the statutes is amended to read:

97.20 (6) (a) As soon as convenient after receiving an application, the department or, with respect to a counter freezer, a city or county granted agent status under s. 97.41, shall investigate the sanitary condition and the construction and equipment. The license shall be granted when construction, equipment and sanitary conditions are found upon inspection to be in accordance with law and regulations.

(b) If the department or, with respect to a counter freezer, a city or county granted agent status under s. 97.41, at any time determines that an alteration, change or addition is required in premises or equipment, ~~it the department~~ shall serve as provided in s. 93.18 (5) upon the applicant, permit holder or licensee written notice of what alteration, change or addition is required and within what reasonable time it shall be made. The licensee shall promptly comply with ~~such~~ the notice.

(c) Each licensee shall ~~make and~~ file with the department ~~such~~ or, with respect to a counter freezer, a city or county granted agent status under s. 97.41, any reports and information as it ~~shall require~~ requires.

SECTION 30. 97.26 (1) of the statutes is amended to read:

97.26 (1) No person shall may operate premises on which there is manufactured ice cream, sherbet, milk sherbet, ice, fruit ice or water ice, or similar frozen or partially frozen food, for commercial purposes, for distribution only at such premises directly to the consumer, ~~without who has not been issued an annual license therefor from by the department, except that a license is not required under this section or s. 97.20 for the manufacture of such products in a licensed restaurant or hotel, to be used and where they are used exclusively to be served at meals in such restaurant or hotel or a city or county granted agent status under s. 97.41.~~ A separate license is required for each such place of business. The premises shall be suitably constructed and equipped, and the equipment shall be kept clean and sanitary and operations be conducted and materials and products handled and stored in a sanitary manner in accordance with ~~regulations~~ rules or ordinances of the department or agent city or county. The license certificate shall be displayed conspicuously in the place of business. No license is required under this section or s. 97.20 for the manufacture of the products governed by this section in a licensed restaurant or hotel, if those products are used exclusively for service at meals in the restaurant or hotel.

SECTION 31. 97.26 (2) of the statutes is repealed and recreated to read:

97.26 (2) An applicant for a license under this section shall complete the application prepared by the department or a city or county granted agent status under s. 97.41, and provide, in writing, any additional information the department or city or county issuing the license requires. If the license is issued by the department, the application shall be accompanied by a fee of \$10 which shall be retained by the state whether or not a license is issued.

SECTION 32. 97.26 (3) of the statutes is amended to read:

97.26 (3) All licenses issued under this section by the department or a city or county granted agent status under s. 97.41 expire on June 30. Section 97.20 (6), (7) (b), (9) and (10) shall apply applies to this section.

SECTION 33. 97.28 (1) of the statutes is amended to read:

97.28 (1) ~~No~~ Except as provided in sub. (2m), no person shall may operate a food processing plant without a license from the department or a city or county granted agent status under s. 97.41. Such The license shall be granted under ~~such~~ any reasonable rules ~~and regulations as~~ or ordinances the department ~~may from time to time prescribe~~ or city or county granted agent status under 97.41 prescribes pertaining to the proper handling

and storing of food and the construction and sanitary condition of the building and equipment to be ~~so~~ used for food processing.

SECTION 34. 97.28 (2) of the statutes is renumbered 97.28 (2m) and amended to read:

97.28 (2m) ~~“Food processing plant” means any place where food is manufactured or prepared for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, mixing, stuffing, packing, bottling, cutting and packaging, or otherwise treating or preserving the same for sale as and for food. A No license under this section shall not~~ may be required of any of the following:

(a) ~~Any person licensed by the department as a bakery, confectionary, soda water bottler, meat or poultry processor, dairy plant or counter freezer as to business covered by the licenses, nor shall a license be required of.~~

(b) ~~A retail merchants merchant having a fixed or established place of business in this state if the merchant does not also sell at wholesale any food processed by the merchant or engage in the grinding, mixing, stuffing, smoking or cooking of meat, fish, or poultry products or the preparation and processing of ready to eat (delicatessen) foods for sale at retail. This section does not apply to the operation of an unless the merchant operates a retail food processing plant.~~

(c) ~~An establishment engaged in the processing of products inspected under the federal meat, poultry or egg products inspection acts, or to restaurants a restaurant, vending machine commissaries commissary or catering establishments establishment licensed and inspected under subch. III of ch. 50 and where if processing operations are limited to the retail preparation and processing of meals or lunches for sale directly to consumers or through vending machines. This section does not apply to beekeepers who are.~~

(d) ~~A beekeeper engaged in an agricultural pursuit under s. 94.761, or who are engaged in farming under s. 94.761 or 102.04 (3), provided if the beekeeper markets only honey extracted from the comb, which is deemed to be raw honey, or naturally produced raw bee products, substantially all of which have been produced by the beekeeper.~~

SECTION 35. 97.28 (2) of the statutes is created to read:

97.28 (2) (a) “Food processing plant” means any place where food is manufactured or prepared for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, mixing, stuffing, packing, bottling, cutting and packaging, or otherwise treating or preserving it for sale as food.

(b) “Retail food processing plant” means a fixed or established place of business in this state where a retail merchant does either of the following:

1. Sells at wholesale any food manufactured or prepared by the retail merchant through the process of canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, mixing, stuffing, packing, bottling, cutting, packaging or otherwise treating or preserving the food for sale as food.

2. Grinds, mixes, stuffs or cooks meat, fish or poultry products for sale directly to consumers or processes ready-to-eat delicatessen foods for sale directly to consumers.

SECTION 36. 97.28 (3) to (8) of the statutes are amended to read:

97.28 (3) (a) ~~Application for a license shall be in writing and shall state such pertinent information in such form as An applicant for a license under this section shall complete the application prepared by the department or the city or county granted agent status under s. 97.41 and provide, in writing, any additional information the department may require and or city or county issuing the license requires. If the license is issued by the department, the application shall be accompanied by a graduated fee, which shall be retained whether or not a license is issued, and which. The fee shall be an amount based on the dollar volume of output for the preceding license year, as follows: For less than~~

\$100,000 a fee of \$20; for \$100,000 or more but less than \$250,000, a fee of \$40; and for \$250,000 or more, a fee of \$60. Dollar volume of output shall be determined by gross sales of product processed plus inventory value of any portion of ~~such~~ the product not sold.

(b) If the plant of the applicant has not operated during ~~such~~ the preceding year, the fee under par. (a) shall be estimated by the department from pertinent facts, at not less than the minimum fee for ~~such operation~~. One year after the filing of ~~such~~ the application the licensee shall report to the department the dollar volume of output, at which time the fee shall be computed ~~thereon~~ and the licensee shall pay the balance due or receive credit upon the fee for the next license period for overpayment.

(4) Before any license is may be issued by the department or a city or county granted agent status under s. 97.41 to any food processing plant operator who buys or otherwise takes title to farm products from the producer ~~thereof of the products~~, except by payment to the producer of the full agreed price at the time of obtaining ~~such~~ possession or control of the products, the applicant shall ~~be required to~~ comply with s. 100.03.

(5) As soon as convenient after the filing of ~~a proper an~~ application under this section, the department or a city or county granted agent status under s. 97.41 shall investigate the construction and the sanitary condition of the plant and equipment. A renewal license may be issued before ~~such~~ the sanitary inspection is completed. When the application is for a new license and in all cases where such action appears advisable, the department or the city or county may issue to the applicant an interim permit ~~to operate, and such~~. The interim permit shall have the effect of a license for 3 months or until such any earlier time at which the department shall have or the city or county has completed its investigation and issued the license or notified the applicant of the denial of his or her application. When the application is denied the permit shall be void.

(6) ~~Licenses Except as provided in sub. (6m), licenses issued to processors of farm produce shall expire on March 31 of each year. No such license shall be granted or renewed unless the applicant shall certify certifies that all growers who have supplied or contracted to supply farm produce to the licensee in any previous year of operation have been fully paid in cash at the agreed price.~~

(7) ~~All other licenses shall expire annually. The Except as provided in subs. (6) and (6m), the department may divide persons required to be licensed by it under this section into such groups by geographical location, type of operation or other method of classification as it believes will best to promote the economical, effective and convenient execution of this section and shall determine on what day of each year licenses in each group shall expire. The department may change such the groups or the methods of classification from time to time. A licensee, the license period of whose group is shortened by such a grouping or change thereof in grouping, shall pay only such that proportion of the annual license fee as the shortened period bears to one year and receive credit on the fee for the next license year for any overpayment; and if. If the period of a group is lengthened, a permit holder or licensee shall pay additional fees proportionate to the time by which it is lengthened.~~

(8) No license ~~shall be issued under this section is~~ transferable. A transfer of the business or the discontinuance of its operation by the licensee in the premises covered by the license voids the license, and the certificate of license thereof shall thereupon be surrendered to the department or issuing city or county immediately.

SECTION 37. 97.28 (6m) of the statutes is created to read:

97.28 (6m) Licenses issued under this section by the department or a city or county granted agent status under s. 97.41 to persons operating retail food processing plants expire on June 30.

SECTION 38. 97.36 of the statutes is amended to read:

97.36 Bakery license. No person ~~shall~~ may operate a bakery without obtaining a license under s. 97.40 from the department ~~as provided in s. 97.40~~. ~~The term “bakery” or a city or county granted agent status under s. 97.41. “Bakery” means any place where bread, crackers, pies, macaroni, spaghetti, or any other food product of for which flour or meal is the principal ingredient are baked, cooked or dried, or prepared or mixed for baking, cooking or drying, for sale as food; provided, that the term “bakery” shall.~~ “Bakery” does not include a restaurant, hotel or other place where ~~wherein~~ where such products are prepared and sold exclusively with meals or lunches.

SECTION 39. 97.38 of the statutes is amended to read:

97.38 Confectionary license. No person ~~shall~~ may operate a confectionary without obtaining a license under s. 97.40 from the department ~~as provided in s. 97.40~~. ~~The term “confectionary” or a city or county granted agent status under s. 97.41. “Confectionary” means any place where candy, fruit, nut meats or any other food product, except a bakery product defined in s. 97.36, is manufactured from or is, coated or filled with saccharine substances for sale as food.~~

SECTION 40. 97.40 (1), (2) and (3) of the statutes are amended to read:

97.40 (1) ~~Application~~ An applicant for a license to operate a bakery or a confectionary ~~shall be in writing, shall state such pertinent~~ complete the application prepared by the department or a city or county granted agent status under s. 97.41 and provide, in writing, any additional information as the department ~~may require and~~ or city or county issuing the license requires. If the license is issued by the department, the application shall be accompanied by a graduated fee based on dollar volume of output for the preceding licensing year, as follows: For less than \$50,000, a fee of \$20; for \$50,000 or more but less than \$150,000, a fee of \$40; and for \$150,000 or more, a fee of \$60. Dollar volume of output shall be determined by gross sales of product processed plus inventory value of any portion of ~~such the~~ product not sold. Fees applicable to bakeries and confectionaries not operated during the preceding licensing year shall be determined in the manner prescribed for food processing plants under s. 97.28 (3) (b).

(2) Licenses shall be granted under ~~such any reasonable rules and regulations as or ordinances the department may prescribe~~ or the city or county granted agent status under s. 97.41 prescribes pertaining to the proper handling and storing of food and the construction and sanitary condition of the place and equipment to be used.

(3) All licenses ~~shall issued under this section by the department or a city or county granted agent status under s. 97.41~~ expire on February 28 June 30 following the effective date. No license ~~shall be issued under this section~~ is transferable. A transfer of the business or the discontinuance of its operation by the licensee at the place covered by the license voids the license and the license certificate shall be surrendered to the department or issuing city or county immediately.

SECTION 41. 97.41 of the statutes is created to read:

97.41 Retail food: agent status for cities and counties. (1) In the administration of this chapter, the department may enter into a written agreement with a city or county which designates the city or county as its agent for issuing licenses to and making investigations or inspections of counter freezers under s. 97.26, retail food processing plants as defined in s. 97.28 (2) (b), bakeries as defined in s. 97.36, and confectionaries as defined in s. 97.38. When the designation is made, no license other than the license issued by the city or county under this section may be required by the department, the city or the county for the same operations. The department shall coordinate the designation of agents under this section with the department of health and social services to ensure that, to the extent feasible, the same city and county agencies are granted agent status under this section and under s. 50.535 (2).

(2) A city or county granted agent status under this section shall meet standards adopted, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each city or county granted agent status. If, at any time, a city or county granted agent status fails to meet the standards, the department may revoke its agent status.

(3) The department shall provide education and training to agents designated under this section to ensure uniformity in the enforcement of this chapter and rules adopted under this chapter.

(4) A city or county granted agent status under this section shall establish and collect the license fee for each type of establishment. The city or county may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the city's or county's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under sub. (5). A city or county which is granted agent status under this section or under s. 50.535, may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment with respect to which it is granted agent status under this section or under s. 50.535 (2).

(5) The department shall establish state fees for its costs related to setting standards for counter freezers, retail food processors, bakeries and confectionaries, setting standards for agents under this section and monitoring and evaluating the activities of, and providing education and training to, agent cities and counties. Agent cities and counties shall include the state fees in the license fees established under sub. (4), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the license fees charged under ss. 97.26 (2), 97.28 (3) and 97.40 (1) in cities and counties where the department issues licenses.

(6) If, under this section, a city or county becomes an agent or its agent status is discontinued during a licensee's license year, the department and the city or county shall divide any license fee paid for that license year according to the proportions of the license year occurring before and after the city's or county's agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(7) Except as provided in s. 97.28 (9), a city or county may impose regulations on licensees and premises for which it is the designated agent under this section, which are stricter than this chapter or rules adopted by the department under this chapter. No such regulation may conflict with this chapter or rules adopted by the department.

(8) This section does not limit the authority of the department to inspect establishments in cities and counties where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the city's or county's licensing, inspection and enforcement program or at the request of the city or county.

(9) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

(a) A permit fee established by a city or county granted agent status exceeds the reasonable costs described under sub. (4).

(b) The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

SECTION 41m. 97.415 of the statutes is created to read:

97.415 Department review of certain fees. The department shall hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in a city or county not granted agent status under s. 97.41 appeals to the department alleging that a permit fee for a counter freezer, retail food processor, bakery or confectionary exceeds the permit issuer's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishment.

SECTION 42. 140.05 (17) (intro.) of the statutes is amended to read:

140.05 (17) (intro.) ~~In addition to any local license that may be required, the~~ (a) The department may license or a city or county granted agent status under s. 50.535 (2) shall issue permits to and regulate campgrounds and camping resorts, recreational and educational camps, mobile home parks and public swimming pools. No person, state or local government who has not been issued a permit under this subsection may conduct, maintain, manage or operate a campground and camping resort, recreational camp and educational camp, mobile home park or public swimming pool, as defined by departmental rule, ~~who has not been issued an annual license by the department.~~

~~(b) A separate license permit is required for each type of establishment and public swimming pool. Licenses are not~~ No permit is transferable from one premise to another or from one person, state or local government to another. Licenses issued under this subsection expire on June 30. An additional penalty fee of \$10 is required for each license if the annual fee for renewal is not paid prior to expiration of the license.

~~(c) Anyone violating who violates~~ this subsection or any rule of the department under this subsection shall be fined not less than \$25 nor more than \$250. Anyone failing who fails to comply with an order of the department shall forfeit \$10 for each day of noncompliance after the order is served upon or directed to him or her. The department may also, after holding a hearing in conformance with under ch. 227, refuse to issue a license permit or suspend or revoke a license permit for violation of this subsection or any rule or order the department issues to implement this subsection.

~~(d) Permits issued under this subsection expire on June 30. Except as provided in s. 50.535 (2) (d) and (e):~~

1. An additional penalty fee of \$10 is required for each permit if the annual renewal fee is not paid before the permit expires; and

2. The annual nonreturnable and nonprorated license permit fees under this subsection are as follows: [See Figure 140.05 (17) (d) 2 following]

SECTION 43. 140.05 (17) (figure) of the statutes is renumbered 140.05 (17) (d) 2 (figure).

SECTION 44. 140.05 (21) of the statutes is repealed.

SECTION 45. Nonstatutory provisions. (1) JOINT STUDY ON RETAIL FOOD REGULATION, LICENSING AND INSPECTION. Representatives of the department of health and social services and the department of agriculture, trade and consumer protection shall jointly study retail food regulation, licensing and inspection and shall make recommendations to the 2 departments regarding coordination of their retail food regulation, licensing and inspection activities, including recommendations for appropriate changes in administrative rules or the statutes. The representatives' study and recommendations shall include actions that may be taken to ensure that:

(a) Where feasible, the same city and county agencies are granted agent status under sections 50.535 and 97.41 of the statutes, as created by this act, and that the standards of the 2 departments for those agents are the same or consistent with each other;

(b) Standards adopted by the 2 departments for retail food establishments under subchapter III of chapter 50 and chapter 97 of the statutes are consistent; and

(c) To the maximum extent possible, in areas of the state where agent status has not been granted to a city or county under sections 50.535 and 97.41 of the statutes, no retail food establishment is licensed or inspected by both of the departments.

(2) PROGRAM BUDGETS AND FEE SCHEDULES. (a) By July 1, 1985, the department of health and social services shall develop a program budget which identifies its costs and revenues associated with regulating, issuing permits to, investigating and inspecting each type of establishment regulated under subchapter III of chapter 50 and section 140.05 (17) of the statutes. The department shall study the fee schedules established under those statutes and, by January 1, 1986, recommend to the legislature changes in those schedules to establish fees at levels which meet but do not exceed the department's costs and which equitably reflect differences in the department's costs based on the permittee's dollar volume of business.

(b) By July 1, 1985, the department of agriculture, trade and consumer protection shall develop a program budget which identifies its costs and revenues associated with regulating, issuing licenses to, investigating and inspecting counter freezers, bakeries, confectionaries and retail food processing plants under chapter 97 of the statutes. The department shall study the fee schedules established under chapter 97 of the statutes for those establishments and, by January 1, 1986, recommend to the legislature changes in those schedules to establish fees at levels which meet but do not exceed the department's costs and which equitably reflect differences in the department's costs based on the licensee's dollar volume of business.

(3) TRANSITION; LICENSE FEES. The department of agriculture, trade and consumer protection shall determine license fees for any counter freezer, bakery, confectionary or retail food processing plant whose license year is changed due to the enactment of this act. If the licensee's license period is lengthened, the licensee shall pay additional fees proportionate to the time by which the period is lengthened. If the license period is shortened, the licensee shall pay only that proportion of the annual license fee as the shortened period bears to one year and shall receive credit for any overpayment in the prior year.

SECTION 46. Terminology changes. Wherever the term "Annual License Fee" appears in the following sections of the statutes, the term "Annual Permit Fee" is substituted: 140.05 (17) (d) 2 (figure), as renumbered.

SECTION 47. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
125.02 (7)	50.50 (1)	50.50 (3)
125.02 (18)	50.50 (3)	50.50 (5)
125.68 (5)	50.50 (3)	50.50 (5)

SECTION 48. Effective date. This act takes effect on January 1, 1985.
