



Rep. Michael W. Tryon

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LRB098 19064 RPM 57951 a

1 AMENDMENT TO HOUSE BILL 5657

2 AMENDMENT NO. _____. Amend House Bill 5657 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Food Handling Regulation Enforcement Act is
5 amended by changing Sections 3.3 and 4 and by adding Sections
6 3.4 and 3.5 as follows:

7 (410 ILCS 625/3.3)

8 Sec. 3.3. Farmers' markets.

9 (a) The General Assembly finds as follows:

10 (1) Farmers' markets, as defined in subsection (b) of
11 this Section, provide not only a valuable marketplace for
12 farmers and food artisans to sell their products directly
13 to consumers, but also a place for consumers to access
14 fresh fruits, vegetables, and other agricultural products.

15 (2) Farmers' markets serve as a stimulator for local
16 economies and for thousands of new businesses every year,

1 allowing farmers to sell directly to consumers and capture
2 the full retail value of their products. They have become
3 important community institutions and have figured in the
4 revitalization of downtown districts and rural
5 communities.

6 (3) Since 1999, the number of farmers' markets has
7 tripled and new ones are being established every year.
8 There is a lack of consistent regulation from one county to
9 the next, resulting in confusion and discrepancies between
10 counties regarding how products may be sold.

11 (4) In 1999, the Department of Public Health published
12 Technical Information Bulletin/Food #30 in order to
13 outline the food handling and sanitation guidelines
14 required for farmers' markets, producer markets, and other
15 outdoor food sales events.

16 (5) While this bulletin was revised in 2010, there
17 continues to be inconsistencies, confusion, and lack of
18 awareness by consumers, farmers, markets, and local health
19 authorities of required guidelines affecting farmers'
20 markets from county to county.

21 (b) For the purposes of this Section:

22 "Department" means the Department of Public Health.

23 "Director" means the Director of Public Health.

24 "Farmers' market" means a common facility or area where the
25 primary purpose is for farmers to gather to sell a variety of
26 fresh fruits and vegetables and other locally produced farm and

1 food products directly to consumers. ~~Local food artisans may~~
2 ~~participate at farmers' markets.~~

3 (c) In order to facilitate the orderly and uniform
4 statewide implementation of the standards established in the
5 Department of Public Health's administrative rules for this Act
6 ~~interpretation of the Department of Public Health's Technical~~
7 ~~Information Bulletin/Food #30~~, the Farmers' Market Task Force
8 shall be formed by the Director to assist the Department in
9 implementing statewide administrative regulations for farmers'
10 markets.

11 (d) This Act does not intend and shall not be construed to
12 limit the power of counties, municipalities, and other local
13 government units to regulate farmers' markets for the
14 protection of the public health, safety, morals, and welfare,
15 including, but not limited to, licensing requirements and time,
16 place, and manner restrictions. This Act provides for a
17 statewide scheme for the orderly and consistent interpretation
18 of the Department of Public Health administrative rules
19 pertaining to the safety of food and food products sold at
20 farmers' markets.

21 (e) The Farmers' Market Task Force shall consist of at
22 least 24 members appointed within 60 days after the effective
23 date of this Section. Task Force members shall consist of:

24 (1) one person appointed by the President of the
25 Senate;

26 (2) one person appointed by the Minority Leader of the

1 Senate;

2 (3) one person appointed by the Speaker of the House of
3 Representatives;

4 (4) one person appointed by the Minority Leader of the
5 House of Representatives;

6 (5) the Director of Public Health or his or her
7 designee;

8 (6) the Director of Agriculture or his or her designee;

9 (7) a representative of a general agricultural
10 production association appointed by the Department of
11 Agriculture;

12 (8) three representatives of local county public
13 health departments appointed by the Director and selected
14 from 3 different counties representing each of the
15 northern, central, and southern portions of this State;

16 (9) four members of the general public who are engaged
17 in local farmers' markets appointed by the Director of
18 Agriculture;

19 (10) a representative of an association representing
20 public health administrators appointed by the Director;

21 (11) a representative of an organization of public
22 health departments that serve the City of Chicago and the
23 counties of Cook, DuPage, Kane, Kendall, Lake, McHenry,
24 Will, and Winnebago appointed by the Director;

25 (12) a representative of a general public health
26 association appointed by the Director;

1 (13) the Director of Commerce and Economic Opportunity
2 or his or her designee;

3 (14) the Lieutenant Governor or his or her designee;
4 and

5 (15) five farmers who sell their farm products at
6 farmers' markets appointed by the Lieutenant Governor or
7 his or her designee.

8 Task Force members' terms shall be for a period of 2 years,
9 with ongoing appointments made according to the provisions of
10 this Section.

11 (f) The Task Force shall be convened by the Director or his
12 or her designee. Members shall elect a Task Force Chair and
13 Co-Chair.

14 (g) Meetings may be held via conference call, in person, or
15 both. Three members of the Task Force may call a meeting as
16 long as a 5-working-day notification is sent via mail, e-mail,
17 or telephone call to each member of the Task Force.

18 (h) Members of the Task Force shall serve without
19 compensation.

20 (i) The Task Force shall undertake a comprehensive and
21 thorough review of the current Statutes and administrative
22 rules that define which products and practices are permitted
23 and which products and practices are not permitted at farmers'
24 markets and to assist the Department in developing statewide
25 administrative regulations for farmers' markets.

26 (j) The Task Force shall advise the Department regarding

1 the content of any administrative rules adopted under this Act
2 prior to adoption of the rules. Any administrative rules,
3 except emergency rules adopted pursuant to Section 5-45 of the
4 Illinois Administrative Procedure Act, adopted without
5 obtaining the advice of the Task Force are null and void. If
6 the Department fails to follow the advice of the Task Force,
7 the Department shall, prior to adopting the rules, transmit a
8 written explanation to the Task Force. If the Task Force,
9 having been asked for its advice, fails to advise the
10 Department within 90 days after receiving the rules for review,
11 the rules shall be considered to have been approved by the Task
12 Force. ~~The Task Force shall assist the Department of Public~~
13 ~~Health and the Department of Agriculture in developing~~
14 ~~administrative regulations and procedures regarding the~~
15 ~~implementation of the various Acts that define which products~~
16 ~~and practices are permitted and which products and practices~~
17 ~~are not permitted at farmers' markets.~~

18 (k) The Department of Public Health shall provide staffing
19 support to the Task Force and shall help to prepare, print, and
20 distribute all reports deemed necessary by the Task Force.

21 (l) The Task Force may request assistance from any entity
22 necessary or useful for the performance of its duties. The Task
23 Force shall issue a report annually to the Secretary of the
24 Senate and the Clerk of the House.

25 (m) The following provisions shall apply concerning
26 statewide farmers' market food safety guidelines:

1 (1) The Director, in accordance with this Section,
2 shall adopt administrative rules (as provided by the
3 Illinois Administrative Procedure Act) for foods found at
4 farmers' markets.

5 (2) The rules and regulations described in this Act
6 shall be consistently enforced by local health authorities
7 throughout the State.

8 (2.5) Notwithstanding any other provision of law
9 except as provided in this Act, local public health
10 departments and all other units of local government are
11 prohibited from creating sanitation guidelines, rules, or
12 regulations for farmers' markets that are more stringent
13 than those farmers' market sanitation regulations
14 contained in the administrative rules adopted by the
15 Department for the purposes of implementing Section 3.3 of
16 this Act. Except as provided for in Section 3.4 of this
17 Act, this Act does not intend and shall not be construed to
18 limit the power of local health departments and other
19 government units from requiring licensing and permits for
20 the sale of commercial food products, processed food
21 products, prepared foods, and potentially hazardous foods
22 at farmers' markets or conducting related inspections and
23 enforcement activities, so long as those permits and
24 licenses do not include unreasonable fees or sanitation
25 provisions and rules that are more stringent than those
26 laid out in the administrative rules adopted by the

1 Department for the purposes of implementing Section 3.3 of
2 this Act.

3 (3) In the case of alleged non-compliance with the
4 provisions described in this Act, local health departments
5 shall issue written notices to vendors and market managers
6 of any noncompliance issues.

7 (4) Produce and food products coming within the scope
8 of the provisions of this Act shall include, but not be
9 limited to, raw agricultural products, including fresh
10 fruits and vegetables; popcorn, grains, seeds, beans, and
11 nuts that are whole, unprocessed, unpackaged, and
12 unsprouted; fresh herb springs and dried herbs in bunches;
13 baked goods sold at farmers' markets; cut fruits and
14 vegetables; milk and cheese products; ice cream; syrups;
15 wild and cultivated mushrooms; apple cider and other fruit
16 and vegetable juices; herb vinegar; garlic-in-oil;
17 flavored oils; pickles, relishes, salsas, and other canned
18 or jarred items; shell eggs; meat and poultry; fish;
19 ready-to-eat foods; ~~and~~ commercially produced prepackaged
20 food products; and any additional items specified in the
21 administrative rules adopted by the Department to
22 implement Section 3.3 of this Act.

23 (n) Local health department regulatory guidelines may be
24 applied to foods not often found at farmers' markets, all other
25 food products not regulated by the Department of Agriculture
26 and the Department of Public Health, as well as live animals to

1 be sold at farmers' markets.

2 (o) The Task Force shall issue annual reports to the
3 Secretary of the Senate and the Clerk of the House with
4 recommendations for the development of administrative rules as
5 specified. The first report shall be issued no later than
6 December 31, 2012.

7 (p) The Department of Public Health and the Department of
8 Agriculture, in conjunction with the Task Force, shall adopt
9 administrative rules necessary to implement, interpret, and
10 make specific the provisions of this Act, including, but not
11 limited to, rules concerning labels, sanitation, and food
12 product safety according to the realms of their jurisdiction in
13 accordance with subsection (j) of this Section. The Task Force
14 shall submit recommendations for administrative rules to the
15 Department no later than December 15, 2014.

16 (q) The Department and the Task Force shall work together
17 to create a food sampling training and license program as
18 specified in Section 3.4 of this Act.

19 (Source: P.A. 97-394, eff. 8-16-11.)

20 (410 ILCS 625/3.4 new)

21 Sec. 3.4. Product samples.

22 (a) For the purpose of this Section, "food product
23 sampling" means food product samples distributed free of charge
24 for promotional or educational purposes only.

25 (b) Notwithstanding any other provision of law, except as

1 provided in subsection (c) of this Section, a vendor who
2 engages in food product sampling at a farmers' market may do so
3 without obtaining a State or local permit to provide those food
4 product samples, provided the vendor complies with the State
5 and local permit requirements to sell the food product to be
6 sampled and with the food preparation, food handling, food
7 storage, and food sampling requirements specified in the
8 administrative rules adopted by the Department to implement
9 Section 3.3 and Section 3.4 of this Act.

10 The Department of Public Health is instructed to work with
11 the Farmers' Market Task Force as created in Section 3.3 of
12 this Act to establish a food sampling at farmers' market
13 training and certification program to fulfill this
14 requirement. The Department shall adopt rules for the food
15 sampling training and certification program and product
16 sampling requirements at farmers' markets in accordance with
17 subsection (j) of Section 3.3. The Department may charge a
18 reasonable fee for the training and certification program. The
19 Department may delegate or contract authority to administer the
20 food sampling training to other qualified public and private
21 entities.

22 (c) Notwithstanding the provisions of subsection (b) of
23 this Section, the Department of Public Health, the Department
24 of Agriculture, a local municipal health department, or a
25 certified local health department may inspect a vendor at a
26 farmers' market to ensure compliance with the provisions in

1 this Section. If an imminent health hazard exists or a vendor's
2 product has been found to be misbranded, adulterated, or not in
3 compliance with the permit exemption for vendors pursuant to
4 this Section, then the regulatory authority may invoke
5 cessation of sales until it deems that the situation has been
6 addressed.

7 (410 ILCS 625/3.5 new)

8 Sec. 3.5. Product origin.

9 (a) All vendors or booths selling specialty crops and raw
10 agricultural commodities at a farmers' market in Illinois must
11 post at the point of sale a placard or include on a label or
12 packing slip the physical address of the farm or farms on which
13 those products were grown or produced.

14 Specialty crops and raw agricultural commodities purchased
15 through wholesale or retail markets may be offered for resale
16 at a farmers' market. If the physical address of the farm or
17 farms where the products were grown or produced is unknown,
18 then the vendor must post at the point of sale a placard or
19 include on a label or packing slip the physical address and
20 business name, when applicable, where the products were
21 purchased.

22 (b) Specialty crops and raw agricultural commodities
23 direct marketed at farmers' markets that do not include a
24 placard at the point of sale or on a label or packing slip
25 stating the physical location of the farm on which those

1 products were grown or produced shall be considered misbranded.

2 (c) Any related federal rules or regulations adopted
3 through the implementation of the federal Food Safety
4 Modernization Act regarding transparency, traceability, and
5 product origin labeling pertaining to specialty crops and raw
6 agricultural commodities shall supersede the provisions of
7 this Section.

8 (410 ILCS 625/4)

9 Sec. 4. Cottage food operation.

10 (a) For the purpose of this Section:

11 "Cottage food operation" means an operation conducted by a
12 person who produces or packages non-potentially hazardous food
13 in a kitchen located in ~~of~~ that person's primary domestic
14 residence or another appropriately designed and equipped
15 residential or commercial-style kitchen on that property for
16 direct sale by the owner or a family member, stored in the
17 residence or appropriately designed and equipped residential
18 or commercial-style kitchen on that property where the food is
19 made.

20 "Department" means the Department of Public Health.

21 "Farmers' market" means a common facility or area where
22 farmers gather to sell a variety of fresh fruits and vegetables
23 and other locally produced farm and food products directly to
24 consumers.

25 "Potentially hazardous food" means a food that is

1 potentially hazardous according to the Department's
2 administrative rules ~~the Federal Food and Drug Administration~~
3 ~~2009 Food Code (FDA 2009 Food Code) or any subsequent~~
4 ~~amendments to the FDA 2009 Food Code.~~ Potentially hazardous
5 food (PHF) in general means a food that requires time and
6 temperature control for safety (TCS) to limit pathogenic
7 microorganism growth or toxin formation. ~~In accordance with the~~
8 ~~FDA 2009 Food Code, potentially hazardous food does not include~~
9 ~~a food item that because of its pH or Aw value, or interaction~~
10 ~~of Aw and pH values, is designated as a non-PHF/non-TCS food in~~
11 ~~Table A or B of the FDA 2009 Food Code's potentially hazardous~~
12 ~~food definition.~~

13 (b) Notwithstanding any other provision of law and except
14 as provided in subsections (c) and (d) of this Section, neither
15 the Department ~~of Public Health~~ nor the Department of
16 Agriculture nor the health department of a unit of local
17 government may regulate the service of food by a cottage food
18 operation providing that all of the following conditions are
19 met:

20 (1) The food is not a potentially hazardous baked good,
21 jam, jelly, preserve, fruit butter, dry herb, dry herb
22 blend, or dry tea blend and is intended for end-use only.

23 The following provisions shall apply:

24 (A) The following jams, jellies and preserves are
25 allowed: apple, apricot, grape, peach, plum, quince,
26 orange, nectarine, tangerine, blackberry, raspberry,

1 blueberry, boysenberry, cherry, cranberry, strawberry,
2 red currants, or a combination of these fruits.
3 Rhubarb, tomato, and pepper jellies or jams are not
4 allowed. Any other jams, jellies, or preserves not
5 listed may be produced by a cottage food operation
6 provided their recipe has been tested and documented by
7 a commercial laboratory, at the expense of the cottage
8 food operation, as being not potentially hazardous,
9 containing a pH equilibrium of less than 4.6.

10 (B) The following fruit butters are allowed:
11 apple, apricot, grape, peach, plum, quince, and prune.
12 Pumpkin butter, banana butter, and pear butter are not
13 allowed. Fruit butters not listed may be produced by a
14 cottage food operation provided their recipe has been
15 tested and documented by a commercial laboratory, at
16 the expense of the cottage food operation, as being not
17 potentially hazardous, containing a pH equilibrium of
18 less than 4.6.

19 (C) Baked goods, such as, but not limited to,
20 breads, cookies, cakes, pies, and pastries are
21 allowed. Only high-acid fruit pies that use the
22 following fruits are allowed: apple, apricot, grape,
23 peach, plum, quince, orange, nectarine, tangerine,
24 blackberry, raspberry, blueberry, boysenberry, cherry,
25 cranberry, strawberry, red currants or a combination
26 of these fruits. Fruit pies not listed may be produced

1 by a cottage food operation provided their recipe has
2 been tested and documented by a commercial laboratory,
3 at the expense of the cottage food operation, as being
4 not potentially hazardous, containing a pH equilibrium
5 of less than 4.6. The following are potentially
6 hazardous and prohibited from production and sale by a
7 cottage food operation: pumpkin pie, sweet potato pie,
8 cheesecake, custard pies, creme pies, and pastries
9 with potentially hazardous fillings or toppings.

10 (2) The food is to be sold at a farmers' market.

11 (3) Gross receipts from the sale of food exempted under
12 this Section do not exceed \$25,000 in a calendar year.

13 (4) The food packaging conforms to the labeling
14 requirements of the Illinois Food, Drug and Cosmetic Act
15 and includes the following information on the label of each
16 of its products:

17 (A) the name and address of the cottage food
18 operation;

19 (B) the common or usual name of the food product;

20 (C) all ingredients of the food product, including
21 any colors, artificial flavors, and preservatives,
22 listed in descending order by predominance of weight
23 shown with common or usual names;

24 (D) the following phrase: "This product was
25 produced in a home kitchen not subject to public health
26 inspection that may also process common food

1 allergens.";

2 (E) the date the product was processed; and

3 (F) allergen labeling as specified in federal
4 labeling requirements.

5 (5) The name and residence of the person preparing and
6 selling products as a cottage food operation is registered
7 with the health department of a unit of local government
8 where the cottage food operation resides. No fees shall be
9 charged for registration. Registration shall be for a
10 minimum period of one year.

11 (6) The person preparing and selling products as a
12 cottage food operation has a Department ~~of Public Health~~
13 approved Food Service Sanitation Management Certificate.

14 (7) At the point of sale a placard is displayed in a
15 prominent location that states the following: "This
16 product was produced in a home kitchen not subject to
17 public health inspection that may also process common food
18 allergens."

19 (c) Notwithstanding the provisions of subsection (b) of
20 this Section, if the Department ~~of Public Health~~ or the health
21 department of a unit of local government has received a
22 consumer complaint or has reason to believe that an imminent
23 health hazard exists or that a cottage food operation's product
24 has been found to be misbranded, adulterated, or not in
25 compliance with the exception for cottage food operations
26 pursuant to this Section, then it may invoke cessation of sales

1 until it deems that the situation has been addressed to the
2 satisfaction of the Department.

3 (d) Notwithstanding the provisions of subsection (b) of
4 this Section, a State-certified local public health department
5 may, upon providing a written statement to the Department ~~of~~
6 ~~Public Health~~, regulate the service of food by a cottage food
7 operation. The regulation by a State-certified local public
8 health department may include all of the following
9 requirements:

10 (1) That the cottage food operation (A) register with
11 the State-certified local public health department, which
12 shall be for a minimum of one year and may include a
13 reasonable fee set by the State-certified local public
14 health department that is no greater than \$25
15 notwithstanding paragraph (5) of subsection (b) of this
16 Section and (B) agree in writing at the time of
17 registration to grant access to the State-certified local
18 public health department to conduct an inspection of the
19 cottage food operation's primary domestic residence in the
20 event of a consumer complaint or foodborne illness
21 outbreak.

22 (2) That in the event of a consumer complaint or
23 foodborne illness outbreak the State-certified local
24 public health department is allowed to (A) inspect the
25 premises of the cottage food operation in question and (B)
26 set a reasonable fee for that inspection.

1 (Source: P.A. 97-393, eff. 1-1-12.)

2 Section 10. The Sanitary Food Preparation Act is amended by
3 changing Section 11 as follows:

4 (410 ILCS 650/11) (from Ch. 56 1/2, par. 77)

5 Sec. 11. Except as hereinafter provided and as provided in
6 Sections 3.3, 3.4, and 4 of the Food Handling Regulation
7 Enforcement Act, the Department of Public Health shall enforce
8 this Act, and for that purpose it may at all times enter every
9 such building, room, basement, inclosure or premises occupied
10 or used or suspected of being occupied or used for the
11 production, preparation or manufacture for sale, or the
12 storage, sale, distribution or transportation of such food, to
13 inspect the premises and all utensils, fixtures, furniture and
14 machinery used as aforesaid; and if upon inspection any such
15 food producing or distribution establishment, conveyance, or
16 employer, employee, clerk, driver or other person is found to
17 be violating any of the provisions of this Act, or if the
18 production, preparation, manufacture, packing, storage, sale,
19 distribution or transportation of such food is being conducted
20 in a manner detrimental to the health of the employees and
21 operatives, or to the character or quality of the food therein
22 being produced, manufactured, packed, stored, sold,
23 distributed or conveyed, the officer or inspector making the
24 inspection or examination shall report such conditions and

1 violations to the Department. The Department of Agriculture
2 shall have exclusive jurisdiction for the enforcement of this
3 Act insofar as it relates to establishments defined by Section
4 2.5 of "The Meat and Poultry Inspection Act", approved July 22,
5 1959, as heretofore or hereafter amended. The Department of
6 Agriculture or Department of Public Health, as the case may be,
7 shall thereupon issue a written order to the person, firm or
8 corporation responsible for the violation or condition
9 aforesaid to abate such condition or violation or to make such
10 changes or improvements as may be necessary to abate them,
11 within such reasonable time as may be required. Notice of the
12 order may be served by delivering a copy thereof to the person,
13 firm or corporation, or by sending a copy thereof by registered
14 mail, and the receipt thereof through the post office shall be
15 prima facie evidence that notice of the order has been
16 received. Such person, firm or corporation may appear in person
17 or by attorney before the Department of Agriculture or the
18 Department of Public Health, as the case may be, within the
19 time limited in the order, and shall be given an opportunity to
20 be heard and to show why such order or instructions should not
21 be obeyed. The hearing shall be under such rules and
22 regulations as may be prescribed by the Department of
23 Agriculture or the Department of Public Health, as the case may
24 be. If after such hearing it appears that this Act has not been
25 violated, the order shall be rescinded. If it appears that this
26 Act is being violated, and that the person, firm or corporation

1 notified is responsible therefor, the previous order shall be
2 confirmed or amended, as the facts shall warrant, and shall
3 thereupon be final, but such additional time as is necessary
4 may be granted within which to comply with the final order. If
5 such person, firm or corporation is not present or represented
6 when such final order is made, notice thereof shall be given as
7 above provided. On failure of the party or parties to comply
8 with the first order of the Department of Agriculture or the
9 Department of Public Health, as the case may be, within the
10 time prescribed, when no hearing is demanded, or upon failure
11 to comply with the final order within the time specified, the
12 Department shall certify the facts to the State's Attorney of
13 the county in which such violation occurred, and such State's
14 Attorney shall proceed against the party or parties for the
15 fines and penalties provided by this Act, and also for the
16 abatement of the nuisance: Provided, that the proceedings
17 herein prescribed for the abatement of nuisances as defined in
18 this Act shall not in any manner relieve the violator from
19 prosecution in the first instance for every such violation, nor
20 from the penalties for such violation prescribed by Section 13.
21 (Source: P.A. 97-393, eff. 1-1-12; 97-394, eff. 8-16-11;
22 97-813, eff. 7-13-12.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."