

1 AN ACT concerning public health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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,
17 allowing farmers to sell directly to consumers and capture
18 the full retail value of their products. They have become
19 important community institutions and have figured in the
20 revitalization of downtown districts and rural
21 communities.

22 (3) Since 1999, the number of farmers' markets has
23 tripled and new ones are being established every year.

1 There is a lack of consistent regulation from one county to
2 the next, resulting in confusion and discrepancies between
3 counties regarding how products may be sold.

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

9 (5) While this bulletin was revised in 2010, there
10 continues to be inconsistencies, confusion, and lack of
11 awareness by consumers, farmers, markets, and local health
12 authorities of required guidelines affecting farmers'
13 markets from county to county.

14 (b) For the purposes of this Section:

15 "Department" means the Department of Public Health.

16 "Director" means the Director of Public Health.

17 "Farmers' market" means a common facility or area where the
18 primary purpose is for farmers to gather to sell a variety of
19 fresh fruits and vegetables and other locally produced farm and
20 food products directly to consumers. ~~Local food artisans may~~
21 ~~participate at farmers' markets.~~

22 (c) In order to facilitate the orderly and uniform
23 statewide implementation of the standards established in the
24 Department of Public Health's administrative rules for this Act
25 ~~interpretation of the Department of Public Health's Technical~~
26 ~~Information Bulletin/Food #30, the Farmers' Market Task Force~~

1 shall be formed by the Director to assist the Department in
2 implementing statewide administrative regulations for farmers'
3 markets.

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

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

17 (1) one person appointed by the President of the
18 Senate;

19 (2) one person appointed by the Minority Leader of the
20 Senate;

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

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

25 (5) the Director of Public Health or his or her
26 designee;

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

2 (7) a representative of a general agricultural
3 production association appointed by the Department of
4 Agriculture;

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

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

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

14 (11) a representative of an organization of public
15 health departments that serve the City of Chicago and the
16 counties of Cook, DuPage, Kane, Kendall, Lake, McHenry,
17 Will, and Winnebago appointed by the Director;

18 (12) a representative of a general public health
19 association appointed by the Director;

20 (13) the Director of Commerce and Economic Opportunity
21 or his or her designee;

22 (14) the Lieutenant Governor or his or her designee;
23 and

24 (15) five farmers who sell their farm products at
25 farmers' markets appointed by the Lieutenant Governor or
26 his or her designee.

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

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

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

11 (h) Members of the Task Force shall serve without
12 compensation.

13 (i) The Task Force shall undertake a comprehensive and
14 thorough review of the current Statutes and administrative
15 rules that define which products and practices are permitted
16 and which products and practices are not permitted at farmers'
17 markets and to assist the Department in developing statewide
18 administrative regulations for farmers' markets.

19 (j) The Task Force shall advise the Department regarding
20 the content of any administrative rules adopted under this Act
21 prior to adoption of the rules. Any administrative rules,
22 except emergency rules adopted pursuant to Section 5-45 of the
23 Illinois Administrative Procedure Act, adopted without
24 obtaining the advice of the Task Force are null and void. If
25 the Department fails to follow the advice of the Task Force,
26 the Department shall, prior to adopting the rules, transmit a

1 written explanation to the Task Force. If the Task Force,
2 having been asked for its advice, fails to advise the
3 Department within 90 days after receiving the rules for review,
4 the rules shall be considered to have been approved by the Task
5 Force. ~~The Task Force shall assist the Department of Public~~
6 Health and the Department of Agriculture in developing
7 administrative regulations and procedures regarding the
8 implementation of the various Acts that define which products
9 and practices are permitted and which products and practices
10 are not permitted at farmers' markets.

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

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

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

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

24 (2) The rules and regulations described in this Act
25 shall be consistently enforced by local health authorities
26 throughout the State.

1 (2.5) Notwithstanding any other provision of law
2 except as provided in this Act, local public health
3 departments and all other units of local government are
4 prohibited from creating sanitation guidelines, rules, or
5 regulations for farmers' markets that are more stringent
6 than those farmers' market sanitation regulations
7 contained in the administrative rules adopted by the
8 Department for the purposes of implementing Section 3.3 of
9 this Act. Except as provided for in Section 3.4 of this
10 Act, this Act does not intend and shall not be construed to
11 limit the power of local health departments and other
12 government units from requiring licensing and permits for
13 the sale of commercial food products, processed food
14 products, prepared foods, and potentially hazardous foods
15 at farmers' markets or conducting related inspections and
16 enforcement activities, so long as those permits and
17 licenses do not include unreasonable fees or sanitation
18 provisions and rules that are more stringent than those
19 laid out in the administrative rules adopted by the
20 Department for the purposes of implementing Section 3.3 of
21 this Act.

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

26 (4) Produce and food products coming within the scope

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

16 (n) Local health department regulatory guidelines may be
17 applied to foods not often found at farmers' markets, all other
18 food products not regulated by the Department of Agriculture
19 and the Department of Public Health, as well as live animals to
20 be sold at farmers' markets.

21 (o) The Task Force shall issue annual reports to the
22 Secretary of the Senate and the Clerk of the House with
23 recommendations for the development of administrative rules as
24 specified. The first report shall be issued no later than
25 December 31, 2012.

26 (p) The Department of Public Health and the Department of

1 Agriculture, in conjunction with the Task Force, shall adopt
2 administrative rules necessary to implement, interpret, and
3 make specific the provisions of this Act, including, but not
4 limited to, rules concerning labels, sanitation, and food
5 product safety according to the realms of their jurisdiction in
6 accordance with subsection (j) of this Section. The Task Force
7 shall submit recommendations for administrative rules to the
8 Department no later than December 15, 2014.

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

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

13 (410 ILCS 625/3.4 new)

14 Sec. 3.4. Product samples.

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

18 (b) Notwithstanding any other provision of law, except as
19 provided in subsection (c) of this Section, a vendor who
20 engages in food product sampling at a farmers' market may do so
21 without obtaining a State or local permit to provide those food
22 product samples, provided the vendor complies with the State
23 and local permit requirements to sell the food product to be
24 sampled and with the food preparation, food handling, food
25 storage, and food sampling requirements specified in the

1 administrative rules adopted by the Department to implement
2 Section 3.3 and Section 3.4 of this Act.

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

15 (c) Notwithstanding the provisions of subsection (b) of
16 this Section, the Department of Public Health, the Department
17 of Agriculture, a local municipal health department, or a
18 certified local health department may inspect a vendor at a
19 farmers' market to ensure compliance with the provisions in
20 this Section. If an imminent health hazard exists or a vendor's
21 product has been found to be misbranded, adulterated, or not in
22 compliance with the permit exemption for vendors pursuant to
23 this Section, then the regulatory authority may invoke
24 cessation of sales until it deems that the situation has been
25 addressed.

1 (410 ILCS 625/3.5 new)

2 Sec. 3.5. Product origin.

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

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

16 (b) Specialty crops and raw agricultural commodities
17 direct marketed at farmers' markets that do not include a
18 placard at the point of sale or on a label or packing slip
19 stating the physical location of the farm on which those
20 products were grown or produced shall be considered misbranded.

21 (c) Any related federal rules or regulations adopted
22 through the implementation of the federal Food Safety
23 Modernization Act regarding transparency, traceability, and
24 product origin labeling pertaining to specialty crops and raw
25 agricultural commodities shall supersede the provisions of
26 this Section.

1 (410 ILCS 625/4)

2 Sec. 4. Cottage food operation.

3 (a) For the purpose of this Section:

4 "Cottage food operation" means an operation conducted by a
5 person who produces or packages non-potentially hazardous food
6 in a kitchen located in ~~of~~ that person's primary domestic
7 residence or another appropriately designed and equipped
8 residential or commercial-style kitchen on that property for
9 direct sale by the owner or a family member, stored in the
10 residence or appropriately designed and equipped residential
11 or commercial-style kitchen on that property where the food is
12 made.

13 "Department" means the Department of Public Health.

14 "Farmers' market" means a common facility or area where
15 farmers gather to sell a variety of fresh fruits and vegetables
16 and other locally produced farm and food products directly to
17 consumers.

18 "Potentially hazardous food" means a food that is
19 potentially hazardous according to the Department's
20 administrative rules ~~the Federal Food and Drug Administration~~
21 ~~2009 Food Code (FDA 2009 Food Code) or any subsequent~~
22 ~~amendments to the FDA 2009 Food Code.~~ Potentially hazardous
23 food (PHF) in general means a food that requires time and
24 temperature control for safety (TCS) to limit pathogenic
25 microorganism growth or toxin formation. ~~In accordance with the~~

1 ~~FDA 2009 Food Code, potentially hazardous food does not include~~
2 ~~a food item that because of its pH or Aw value, or interaction~~
3 ~~of Aw and pH values, is designated as a non-PHF/non-TCS food in~~
4 ~~Table A or B of the FDA 2009 Food Code's potentially hazardous~~
5 ~~food definition.~~

6 (b) Notwithstanding any other provision of law and except
7 as provided in subsections (c) and (d) of this Section, neither
8 the Department ~~of Public Health~~ nor the Department of
9 Agriculture nor the health department of a unit of local
10 government may regulate the service of food by a cottage food
11 operation providing that all of the following conditions are
12 met:

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

16 The following provisions shall apply:

17 (A) The following jams, jellies and preserves are
18 allowed: apple, apricot, grape, peach, plum, quince,
19 orange, nectarine, tangerine, blackberry, raspberry,
20 blueberry, boysenberry, cherry, cranberry, strawberry,
21 red currants, or a combination of these fruits.
22 Rhubarb, tomato, and pepper jellies or jams are not
23 allowed. Any other jams, jellies, or preserves not
24 listed may be produced by a cottage food operation
25 provided their recipe has been tested and documented by
26 a commercial laboratory, at the expense of the cottage

1 food operation, as being not potentially hazardous,
2 containing a pH equilibrium of less than 4.6.

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

12 (C) Baked goods, such as, but not limited to,
13 breads, cookies, cakes, pies, and pastries are
14 allowed. Only high-acid fruit pies that use the
15 following fruits are allowed: apple, apricot, grape,
16 peach, plum, quince, orange, nectarine, tangerine,
17 blackberry, raspberry, blueberry, boysenberry, cherry,
18 cranberry, strawberry, red currants or a combination
19 of these fruits. Fruit pies not listed may be produced
20 by a cottage food operation provided their recipe has
21 been tested and documented by a commercial laboratory,
22 at the expense of the cottage food operation, as being
23 not potentially hazardous, containing a pH equilibrium
24 of less than 4.6. The following are potentially
25 hazardous and prohibited from production and sale by a
26 cottage food operation: pumpkin pie, sweet potato pie,

1 cheesecake, custard pies, creme pies, and pastries
2 with potentially hazardous fillings or toppings.

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

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

6 (4) The food packaging conforms to the labeling
7 requirements of the Illinois Food, Drug and Cosmetic Act
8 and includes the following information on the label of each
9 of its products:

10 (A) the name and address of the cottage food
11 operation;

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

13 (C) all ingredients of the food product, including
14 any colors, artificial flavors, and preservatives,
15 listed in descending order by predominance of weight
16 shown with common or usual names;

17 (D) the following phrase: "This product was
18 produced in a home kitchen not subject to public health
19 inspection that may also process common food
20 allergens.";

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

22 (F) allergen labeling as specified in federal
23 labeling requirements.

24 (5) The name and residence of the person preparing and
25 selling products as a cottage food operation is registered
26 with the health department of a unit of local government

1 where the cottage food operation resides. No fees shall be
2 charged for registration. Registration shall be for a
3 minimum period of one year.

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

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

12 (c) Notwithstanding the provisions of subsection (b) of
13 this Section, if the Department ~~of Public Health~~ or the health
14 department of a unit of local government has received a
15 consumer complaint or has reason to believe that an imminent
16 health hazard exists or that a cottage food operation's product
17 has been found to be misbranded, adulterated, or not in
18 compliance with the exception for cottage food operations
19 pursuant to this Section, then it may invoke cessation of sales
20 until it deems that the situation has been addressed to the
21 satisfaction of the Department.

22 (d) Notwithstanding the provisions of subsection (b) of
23 this Section, a State-certified local public health department
24 may, upon providing a written statement to the Department ~~of~~
25 ~~Public Health~~, regulate the service of food by a cottage food
26 operation. The regulation by a State-certified local public

1 health department may include all of the following
2 requirements:

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

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

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

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

23 (410 ILCS 650/11) (from Ch. 56 1/2, par. 77)

24 Sec. 11. Except as hereinafter provided and as provided in

1 Sections 3.3, 3.4, and 4 of the Food Handling Regulation
2 Enforcement Act, the Department of Public Health shall enforce
3 this Act, and for that purpose it may at all times enter every
4 such building, room, basement, inclosure or premises occupied
5 or used or suspected of being occupied or used for the
6 production, preparation or manufacture for sale, or the
7 storage, sale, distribution or transportation of such food, to
8 inspect the premises and all utensils, fixtures, furniture and
9 machinery used as aforesaid; and if upon inspection any such
10 food producing or distribution establishment, conveyance, or
11 employer, employee, clerk, driver or other person is found to
12 be violating any of the provisions of this Act, or if the
13 production, preparation, manufacture, packing, storage, sale,
14 distribution or transportation of such food is being conducted
15 in a manner detrimental to the health of the employees and
16 operatives, or to the character or quality of the food therein
17 being produced, manufactured, packed, stored, sold,
18 distributed or conveyed, the officer or inspector making the
19 inspection or examination shall report such conditions and
20 violations to the Department. The Department of Agriculture
21 shall have exclusive jurisdiction for the enforcement of this
22 Act insofar as it relates to establishments defined by Section
23 2.5 of "The Meat and Poultry Inspection Act", approved July 22,
24 1959, as heretofore or hereafter amended. The Department of
25 Agriculture or Department of Public Health, as the case may be,
26 shall thereupon issue a written order to the person, firm or

1 corporation responsible for the violation or condition
2 aforesaid to abate such condition or violation or to make such
3 changes or improvements as may be necessary to abate them,
4 within such reasonable time as may be required. Notice of the
5 order may be served by delivering a copy thereof to the person,
6 firm or corporation, or by sending a copy thereof by registered
7 mail, and the receipt thereof through the post office shall be
8 prima facie evidence that notice of the order has been
9 received. Such person, firm or corporation may appear in person
10 or by attorney before the Department of Agriculture or the
11 Department of Public Health, as the case may be, within the
12 time limited in the order, and shall be given an opportunity to
13 be heard and to show why such order or instructions should not
14 be obeyed. The hearing shall be under such rules and
15 regulations as may be prescribed by the Department of
16 Agriculture or the Department of Public Health, as the case may
17 be. If after such hearing it appears that this Act has not been
18 violated, the order shall be rescinded. If it appears that this
19 Act is being violated, and that the person, firm or corporation
20 notified is responsible therefor, the previous order shall be
21 confirmed or amended, as the facts shall warrant, and shall
22 thereupon be final, but such additional time as is necessary
23 may be granted within which to comply with the final order. If
24 such person, firm or corporation is not present or represented
25 when such final order is made, notice thereof shall be given as
26 above provided. On failure of the party or parties to comply

1 with the first order of the Department of Agriculture or the
2 Department of Public Health, as the case may be, within the
3 time prescribed, when no hearing is demanded, or upon failure
4 to comply with the final order within the time specified, the
5 Department shall certify the facts to the State's Attorney of
6 the county in which such violation occurred, and such State's
7 Attorney shall proceed against the party or parties for the
8 fines and penalties provided by this Act, and also for the
9 abatement of the nuisance: Provided, that the proceedings
10 herein prescribed for the abatement of nuisances as defined in
11 this Act shall not in any manner relieve the violator from
12 prosecution in the first instance for every such violation, nor
13 from the penalties for such violation prescribed by Section 13.
14 (Source: P.A. 97-393, eff. 1-1-12; 97-394, eff. 8-16-11;
15 97-813, eff. 7-13-12.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.