

AN ACT concerning health.

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

Section 5. The Food Handling Regulation Enforcement Act is amended by changing Sections 3.3 and 4 and by renumbering and changing Section 3.4 as added by Public Act 98-643 as follows:

(410 ILCS 625/3.3)

Sec. 3.3. Farmers' markets.

(a) The General Assembly finds as follows:

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

(2) Farmers' markets serve as a stimulator for local economies and for thousands of new businesses every year, allowing farmers to sell directly to consumers and capture the full retail value of their products. They have become important community institutions and have figured in the revitalization of downtown districts and rural communities.

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

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

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

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

(b) For the purposes of this Section:

"Department" means the Department of Public Health.

"Director" means the Director of Public Health.

"Farmers' market" means a common facility or area where the primary purpose is for farmers to gather to sell a variety of fresh fruits and vegetables and other locally produced farm and food products directly to consumers.

(c) In order to facilitate the orderly and uniform statewide implementation of the standards established in the Department of Public Health's administrative rules for this Act, the Farmers' Market Task Force shall be formed by the Director to assist the Department in implementing statewide administrative regulations for farmers' markets.

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

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

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

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

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

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

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

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

(7) a representative of a general agricultural production association appointed by the Department of

Agriculture;

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The Task Force shall advise the Department regarding the content of any administrative rules adopted under this Section and Sections 3.4, 3.5, and 4 of this Act prior to adoption of the rules. Any administrative rules, except emergency rules adopted pursuant to Section 5-45 of the Illinois Administrative Procedure Act, adopted without obtaining the advice of the Task Force are null and void. If the Department fails to follow the advice of the Task Force, the Department shall, prior to adopting the rules, transmit a written explanation to the Task Force. If the Task Force, having been asked for its advice, fails to advise the

Department within 90 days after receiving the rules for review, the rules shall be considered to have been approved by the Task Force.

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

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

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

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

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

(2.5) Notwithstanding any other provision of law except as provided in this Act, local public health departments and all other units of local government are prohibited from creating sanitation guidelines, rules, or regulations for farmers' markets that are more stringent than those farmers' market sanitation regulations contained in the administrative rules adopted by the

Department for the purposes of implementing this Section ~~3.3~~ and Sections 3.4, 3.5, and 4 of this Act. Except as provided for in Sections ~~Section~~ 3.4 and 4 of this Act, this Act does not intend and shall not be construed to limit the power of local health departments and other government units from requiring licensing and permits for the sale of commercial food products, processed food products, prepared foods, and potentially hazardous foods at farmers' markets or conducting related inspections and enforcement activities, so long as those permits and licenses do not include unreasonable fees or sanitation provisions and rules that are more stringent than those laid out in the administrative rules adopted by the Department for the purposes of implementing this Section ~~3.3~~ and Sections 3.4, 3.5, and 4 of this Act.

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

(4) Produce and food products coming within the scope of the provisions of this Act shall include, but not be limited to, raw agricultural products, including fresh fruits and vegetables; popcorn, grains, seeds, beans, and nuts that are whole, unprocessed, unpackaged, and unsprouted; fresh herb springs and dried herbs in bunches; baked goods sold at farmers' markets; cut fruits and

vegetables; milk and cheese products; ice cream; syrups; wild and cultivated mushrooms; apple cider and other fruit and vegetable juices; herb vinegar; garlic-in-oil; flavored oils; pickles, relishes, salsas, and other canned or jarred items; shell eggs; meat and poultry; fish; ready-to-eat foods; commercially produced prepackaged food products; and any additional items specified in the administrative rules adopted by the Department to implement Section 3.3 of this Act.

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

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

(p) The Department of Public Health and the Department of Agriculture, in conjunction with the Task Force, shall adopt administrative rules necessary to implement, interpret, and make specific the provisions of this Act, including, but not limited to, rules concerning labels, sanitation, and food product safety according to the realms of their jurisdiction in accordance with subsection (j) of this Section. ~~The Task Force~~

~~shall submit recommendations for administrative rules to the Department no later than December 15, 2014.~~

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

(Source: P.A. 97-394, eff. 8-16-11; 98-660, eff. 6-23-14.)

(410 ILCS 625/3.6)

Sec. 3.6 ~~3.4~~. Home kitchen operation.

(a) For the purpose of this Section, "home kitchen operation" means a person who produces or packages non-potentially hazardous baked goods ~~food~~ in a kitchen of that person's primary domestic residence for direct sale by the owner or a family member. As used in this Section, "baked good" has the meaning given to that term under subparagraph (C) of paragraph (1) of subsection (b) of Section 4 of this Act. A home kitchen operation does not include a person who produces or packages non-potentially hazardous baked goods for sale by a religious, charitable, or nonprofit organization for fundraising purposes; the production or packaging of non-potentially hazardous baked goods for these purposes is exempt from the requirements of this Act ~~, or for sale by a religious, charitable, or nonprofit organization, stored in the residence where the food is made.~~ The following conditions must be met in order to qualify as a home kitchen operation:

(1) Monthly gross sales do not exceed \$1,000.

(2) The food is ~~not~~ a non-potentially ~~potentially~~ hazardous baked good ~~food~~, as described ~~defined~~ in Section 4 of this Act.

(3) A notice is provided to the purchaser that the product was produced in a home kitchen.

(4) The food package is affixed with a label or other written notice is provided to the purchaser that includes:

(i) the common or usual name of the food product;
and

(ii) allergen labeling as specified in federal labeling requirements by the United States Food and Drug Administration.

(5) The food is sold directly to the consumer.

(6) The food is stored in the residence where it is produced or packaged.

(b) The Department of Public Health or the health department of a unit of local government may inspect a home kitchen operation in the event of a complaint or disease outbreak.

(c) The requirements of this ~~This~~ Section apply ~~applies~~ only to a home kitchen operation located in a municipality, township, or county where the local governing body having the jurisdiction to enforce this Act or the rules adopted under this Act has adopted an ordinance authorizing home kitchen operations ~~the direct sale of baked goods as described in Section 4 of this Act.~~

(Source: P.A. 98-643, eff. 6-10-14; revised 10-20-14.)

(410 ILCS 625/4)

Sec. 4. Cottage food operation.

(a) For the purpose of this Section:

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

"Department" means the Department of Public Health.

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

"Main ingredient" means an agricultural product that is the defining or distinctive ingredient in a cottage food product, though not necessarily by predominance of weight.

"Potentially hazardous food" means a food that is potentially hazardous according to the Department's administrative rules. Potentially hazardous food (PHF) in general means a food that requires time and temperature control

for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

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

(1) The food is ~~not~~ a non-potentially ~~potentially~~ hazardous baked good, jam, jelly, preserve, fruit butter, dry herb, dry herb blend, ~~or~~ dry tea blend, or similar product as adopted and specified by Department rules pursuant to subsection (e) of this Section, and is intended for end-use only. The following provisions shall apply:

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

containing a pH equilibrium of less than 4.6 or has been specified and adopted as allowed in administrative rules by the Department pursuant to subsection (e) of this Section.

(B) The following fruit butters are allowed: apple, apricot, grape, peach, plum, quince, and prune. Pumpkin butter, banana butter, and pear butter are not allowed. Fruit butters not listed may be produced by a cottage food operation provided their recipe has been tested and documented by a commercial laboratory, at the expense of the cottage food operation, as being not potentially hazardous, containing a pH equilibrium of less than 4.6 or has been specified and adopted as allowed in administrative rules by the Department pursuant to subsection (e) of this Section.

(C) Baked goods, such as, but not limited to, breads, cookies, cakes, pies, and pastries are allowed. Only high-acid fruit pies that use the following fruits are allowed: apple, apricot, grape, peach, plum, quince, orange, nectarine, tangerine, blackberry, raspberry, blueberry, boysenberry, cherry, cranberry, strawberry, red currants or a combination of these fruits. Fruit pies not listed may be produced by a cottage food operation provided their recipe has been tested and documented by a commercial laboratory, at the expense of the cottage food operation, as being

not potentially hazardous, containing a pH equilibrium of less than 4.6 or has been specified and adopted as allowed in administrative rules by the Department pursuant to subsection (e) of this Section. The following are potentially hazardous and prohibited from production and sale by a cottage food operation: pumpkin pie, sweet potato pie, cheesecake, custard pies, creme pies, and pastries with potentially hazardous fillings or toppings.

(2) The food is to be sold at a farmers' market, with the exception that cottage foods that have a locally grown agricultural product as the main ingredient may be sold on the farm where the agricultural product is grown or delivered directly to the consumer.

(3) Gross receipts from the sale of food exempted under this Section do not exceed \$36,000 ~~\$25,000~~ in a calendar year.

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

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

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

(C) all ingredients of the food product, including any colors, artificial flavors, and preservatives,

listed in descending order by predominance of weight shown with common or usual names;

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

(E) the date the product was processed; and

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

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

(6) The person preparing or packaging ~~and selling~~ products as a cottage food operation has a Department approved Food Service Sanitation Management Certificate.

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

(c) Notwithstanding the provisions of subsection (b) of this Section, if the Department or the health department of a unit of local government has received a consumer complaint or

has reason to believe that an imminent health hazard exists or that a cottage food operation's product has been found to be misbranded, adulterated, or not in compliance with the exception for cottage food operations pursuant to this Section, then it may invoke cessation of sales until it deems that the situation has been addressed to the satisfaction of the Department.

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

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

(2) That in the event of a consumer complaint or foodborne illness outbreak the State-certified local

public health department is allowed to (A) inspect the premises of the cottage food operation in question and (B) set a reasonable fee for that inspection.

(e) The Department may adopt rules as may be necessary to implement the provisions of this Section.

(Source: P.A. 97-393, eff. 1-1-12; 98-660, eff. 6-23-14.)