



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2007

Introduced 2/26/2021, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

410 ILCS 625/4
410 ILCS 625/3.6 rep.

Amends the Food Handling Regulation Enforcement Act. In provisions regarding cottage food operations: makes changes to definitions; requires cottage food operations to comply with specified requirements (rather than providing that specified entities may regulate the transaction of food or drink by a cottage food operation if the requirements are met); adds requirements for the sale of low-acid canned foods and fermented or acidified foods; provides that food and drink produced by a cottage food operation shall be sold directly to consumers for their own consumption and not for resale; removes language requiring State-certified local public health departments to regulate the service of food by a cottage food operation and allowing them to require a cottage food operation to submit specified canned foods to a commercial laboratory to verify specified information; requires local health departments to register eligible cottage food operations and issue certificates of registration; adds an exemption for a person who produces or packages a non-potentially hazardous baked good for sale by a religious, charitable, or nonprofit organization for fundraising purposes; preempts home rule; and makes other changes. Repeals provisions regarding home kitchen operations.

LRB102 12761 CPF 18100 b

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning 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 Section 4 as follows:

6 (410 ILCS 625/4)

7 Sec. 4. Cottage food operation.

8 (a) For the purpose of this Section:

9 A food is "acidified" if: (i) acid or acid ingredients are
10 added to it to produce a final equilibrium pH of 4.6 or below;
11 or (ii) it is fermented to produce a final equilibrium pH of
12 4.6 or below.

13 "Canned food" means food ~~preserved in air tight,~~
14 ~~vacuum sealed containers~~ that has been ~~are~~ heat processed
15 sufficiently under United States Department of Agriculture
16 guidelines to enable storing the food at normal home
17 temperatures.

18 "Cottage food operation" means an operation conducted by a
19 person who produces or packages food or drink, other than
20 foods and drinks listed as prohibited in paragraph (1) ~~(1.5)~~
21 of subsection (b) of this Section, in a kitchen located in that
22 person's primary domestic residence or another appropriately
23 designed and equipped kitchen on a farm ~~residential or~~

1 ~~commercial style kitchen on that property~~ for direct sale by
2 the owner, a family member, or employee.

3 "Cut leafy greens" means fresh leafy greens whose leaves
4 have been cut, shredded, sliced, chopped, or torn. "Cut leafy
5 greens" does not mean cut-to-harvest leafy greens.

6 "Department" means the Department of Public Health.

7 "Equilibrium pH" means the final potential of hydrogen
8 measured in an acidified food after all the components of the
9 food have achieved the same acidity.

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

14 "Hot fill and hold method" means a method under which food
15 has been heat processed sufficiently under United States
16 Department of Agriculture guidelines to enable storing the
17 food at normal home temperatures.

18 "Leafy greens" includes iceberg lettuce; romaine lettuce;
19 leaf lettuce; butter lettuce; baby leaf lettuce, such as
20 immature lettuce or leafy greens; escarole; endive; spring
21 mix; spinach; cabbage; kale; arugula; and chard. "Leafy
22 greens" does not include microgreens or herbs such as cilantro
23 or parsley.

24 "Local health department" means the State-certified health
25 department of a unit of local government in which a cottage
26 food operation is located.

1 "Low-acid canned food" means any canned food with a
2 finished equilibrium pH greater than 4.6 and a water activity
3 (aw) greater than 0.85.

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

7 "Microgreen" means an edible plant seedling grown in soil
8 or substrate and harvested above the soil or substrate line.

9 "Potentially hazardous food" means a food that is
10 potentially hazardous according to the Department's
11 administrative rules. Potentially hazardous food (PHF) in
12 general means a food that requires time and temperature
13 control for safety (TCS) to limit pathogenic microorganism
14 growth or toxin formation.

15 "Sprout" means any seedling intended for human consumption
16 that was produced in a manner that does not meet the definition
17 of microgreen.

18 (b) (1) ~~Notwithstanding any other provision of law and~~
19 ~~except as provided in subsections (c), (d), and (e) of this~~
20 ~~Section, neither the Department nor the Department of~~
21 ~~Agriculture nor the health department of a unit of local~~
22 ~~government may regulate the transaction of food or drink by a~~
23 ~~cottage food operation providing that all of the following~~
24 ~~conditions are met: (1) (Blank). (1.5) A cottage food~~
25 operation may produce homemade food and drink. A ~~However, a~~
26 cottage food operation, ~~unless properly licensed, certified,~~

1 ~~and compliant with all requirements to sell a listed food item~~
2 ~~under the laws and regulations pertinent to that food item,~~
3 shall not sell or offer to sell the following food items or
4 processed foods containing the following food items, except as
5 indicated:

6 (A) meat, poultry, fish, seafood, or shellfish;

7 (B) dairy, except as an ingredient in a
8 non-potentially hazardous food, such as a baked good
9 or candy, such as caramel, subject to paragraph (4),
10 or as an ingredient in a baked good frosting, such as
11 buttercream ~~(1.8)~~;

12 (C) eggs, except as an ingredient in a
13 non-potentially hazardous hazardous food, including
14 dry noodles, or as an ingredient in a baked good
15 frosting, such as buttercream, if the eggs are not
16 raw, baked good or in dry noodles;

17 (D) pumpkin pies, sweet potato pies, cheesecakes,
18 custard pies, creme pies, and pastries with
19 potentially hazardous fillings or toppings;

20 (E) garlic in oil or oil infused with garlic,
21 except if the garlic oil is acidified;

22 ~~(F) canned foods, except for the following, which~~
23 ~~may be canned only in Mason style jars with new lids:~~

24 ~~(i) fruit jams, fruit jellies, fruit~~
25 ~~preserves, or fruit butters;~~

26 ~~(ii) syrups;~~

1 ~~(iii) whole or cut fruit canned in syrup;~~

2 ~~(iv) acidified fruit or vegetables prepared~~
3 ~~and offered for sale in compliance with paragraph~~
4 ~~(1.6); and~~

5 ~~(v) condiments such as prepared mustard,~~
6 ~~horseradish, or ketchup that do not contain~~
7 ~~ingredients prohibited under this Section and that~~
8 ~~are prepared and offered for sale in compliance~~
9 ~~with paragraph (1.6);~~

10 (F) low-acid canned foods such as vegetables,
11 dried beans, and vegetable soups; a low-acid canned
12 food containing fermented or acidified food that is
13 offered for sale must comply with paragraph (3); a
14 low-acid canned food containing tomatoes or canned
15 products containing tomatoes that is offered for sale
16 must comply with paragraph (2);

17 (G) sprouts;

18 (H) cut leafy greens, except for cut leafy greens
19 that are dehydrated, acidified, or blanched and
20 frozen;

21 (I) cut or pureed fresh tomato or melon;

22 (J) dehydrated tomato or melon;

23 (K) frozen cut melon;

24 (L) wild-harvested, non-cultivated mushrooms;

25 (M) alcoholic beverages; or

26 (N) kombucha.

1 (2) ~~(1.6)~~ In order to sell canned tomatoes or a canned
2 product containing tomatoes, a cottage food operator shall
3 either:

4 (A) follow exactly a recipe that has been tested
5 by the United States Department of Agriculture or by a
6 state cooperative extension located in this State or
7 any other state in the United States; or

8 (B) submit the recipe, at the cottage food
9 operator's expense, to a commercial laboratory
10 according to the commercial laboratory's direction to
11 test that the product has been adequately acidified;
12 use only the varietal or proportionate varietals of
13 tomato included in the tested recipe for all
14 subsequent batches of such recipe; and provide
15 documentation of the test results of the recipe
16 submitted under this subparagraph to an inspector upon
17 request during any inspection authorized by paragraph
18 (2) of subsection (d).

19 ~~(1.7) A State certified local public health department~~
20 ~~that regulates the service of food by a cottage food~~
21 ~~operation in accordance with subsection (d) of this~~
22 ~~Section may require a cottage food operation to submit a~~
23 ~~canned food that is subject to paragraph (1.6), at the~~
24 ~~cottage food operator's expense, to a commercial~~
25 ~~laboratory to verify that the product has a final~~
26 ~~equilibrium pH of 4.6 or below.~~

1 (3) In order to sell a fermented or acidified food, a
2 local health department may require a cottage food
3 operation to submit one of the following for each unique
4 product:

5 (A) a recipe that has been tested by the United
6 States Department of Agriculture or a Cooperative
7 Extension System located in this State or any other
8 state in the United States; or

9 (B) the results of a pH test from a commercial
10 laboratory to verify that the product has been
11 adequately acidified; if a test is requested it must
12 be conducted at the operator's expense.

13 A fermented or acidified food shall be packaged
14 according to one of the following standards:

15 (A) Canned acidified and fermented foods must be
16 canned in mason-style jars with new lids.

17 (B) Acidified and fermented foods that undergo the
18 hot fill and hold method shall be sold in any container
19 with a tight-fitting lid that is new and clean.

20 (C) Acidified and fermented foods that are not
21 hot-packed or canned shall be sold in any container
22 that is new, clean, and seals properly and must be
23 stored, transported, and sold at or below 41 degrees.

24 (4) ~~(1.8)~~ A ~~State-certified~~ local ~~public~~ health
25 department that regulates the service of food by a cottage
26 food operation in accordance with subsection (d) of this

1 Section may require a cottage food operation to submit a
2 recipe for any baked good containing cheese, at the
3 cottage food operator's expense, to a commercial
4 laboratory to verify that it is non-potentially hazardous
5 before allowing the cottage food operation to sell the
6 baked good as a cottage food.

7 (5) The food and drink produced by a cottage food
8 operation shall be sold directly to consumers for their
9 own consumption and not for resale. Sales directly to
10 consumers include, but are not limited to: sales at
11 farmers' markets, fairs, festivals, or public events or
12 online; pickup from the private home or farm of the
13 cottage food operator if not prohibited by laws of the
14 unit of local government that apply equally to all
15 home-based businesses; delivery to the customer; or pickup
16 from a private property with the consent of the property
17 holder. Cottage food products shall not be shipped out of
18 State.

19 (6) For cottage food operations that are not utilizing
20 municipal water supplies, such as operations using private
21 wells, a local health department may require a water
22 sample test to verify that the water source being used
23 meets public safety standards. If a test is requested, it
24 must be conducted at the operator's expense.

25 ~~(2) The food is to be sold at a farmers' market, with~~
26 ~~the exception that cottage foods that have a locally grown~~

1 ~~agricultural product as the main ingredient may be sold on~~
2 ~~the farm where the agricultural product is grown or~~
3 ~~delivered directly to the consumer.~~

4 ~~(3) (Blank).~~

5 (7) The food packaging must conform to the labeling
6 requirements of the Illinois Food, Drug, and Cosmetic Act.
7 The food packaging shall be affixed with a prominent label
8 or, if the portion of food sold is not packaged
9 individually, other prominent written notice is provided
10 to the purchaser that includes: ~~(4) The food packaging~~
11 ~~conforms to the labeling requirements of the Illinois~~
12 ~~Food, Drug and Cosmetic Act and includes the following~~
13 ~~information on the label of each of its products:~~

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

16 (B) the identifying registration number provided
17 by the local health department on the certification of
18 registration and the name of the municipality or
19 county in which the registration was filed;

20 (C) ~~(B)~~ the common or usual name of the food
21 product;

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

1 (E) ~~(D)~~ the following phrase in prominent
2 lettering: "This product was produced in a home
3 kitchen not subject to public health inspection that
4 may also process common food allergens.";

5 (F) ~~(E)~~ the date the product was processed; and

6 (G) ~~(F)~~ allergen labeling as specified in federal
7 labeling requirements.

8 (8) ~~(5)~~ The name and residence of the person preparing
9 and selling products as a cottage food operation must be
10 ~~are~~ registered with the local health department and the
11 certificate of registration must be available at the point
12 of sale. A cottage food operation is required to register
13 only with the local health department for the unit of
14 local government in which it is located, but may sell
15 products outside of the units of local government where
16 the cottage food operation is located. ~~of a unit of local~~
17 ~~government where the cottage food operation resides. No~~
18 ~~fees shall be charged for registration. Registration shall~~
19 ~~be for a minimum period of one year.~~

20 (9) ~~(6)~~ The person preparing or packaging products as
21 part of a cottage food operation must be a
22 Department-approved certified food protection manager ~~has~~
23 ~~a Department approved Food Service Sanitation Management~~
24 ~~Certificate.~~

25 (10) ~~(7)~~ At the point of sale, notice must be provided
26 ~~a placard is displayed~~ in a prominent location that states

1 the following: "This product was produced in a home
2 kitchen not subject to public health inspection that may
3 also process common food allergens.". At a physical
4 display, notice shall be a placard. Online, notice shall
5 be a message on the cottage food operation's online sales
6 interface.

7 (b-5) A home rule unit may not regulate cottage food
8 operations in a manner inconsistent with the regulation by the
9 State of cottage food operations under this Section. This
10 Section is a limitation under subsection (i) of Section 6 of
11 Article VII of the Illinois Constitution on the concurrent
12 exercise by home rule units of powers and functions exercised
13 by the State.

14 (c) Notwithstanding the provisions of subsection (b) of
15 this Section, if the Department or a local ~~the~~ health
16 department ~~of a unit of local government~~ has received a
17 consumer complaint or has reason to believe that an imminent
18 health hazard exists or that a cottage food operation's
19 product has been found to be misbranded, adulterated, or not
20 in compliance with the exception for cottage food operations
21 pursuant to this Section, then it may invoke cessation of
22 sales of cottage food products until it deems that the
23 situation has been addressed to the satisfaction of the
24 Department or, if the situation is not amenable to being
25 addressed, revoke the cottage food operation's registration
26 following a process outlined by the Department.

1 (d) A local health department shall register any eligible
2 cottage food operation that meets the requirements of this
3 Section and shall issue a certificate of registration with an
4 identifying registration number to each registered cottage
5 food operation. Registration shall be valid for one year and
6 the local health department may impose a reasonable fee that
7 is no greater than \$25. The regulation by a local health
8 department may include all of the following requirements:
9 ~~Notwithstanding the provisions of subsection (b) of this~~
10 ~~Section, a State certified local public health department may,~~
11 ~~upon providing a written statement to the Department, regulate~~
12 ~~the service of food by a cottage food operation. The~~
13 ~~regulation by a State certified local public health department~~
14 ~~may include all of the following requirements:~~

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

26 (2) That in the event of a consumer complaint or

1 foodborne illness outbreak the ~~State-certified~~ local
2 ~~public~~ health department is allowed to (A) inspect the
3 premises of the cottage food operation in question and (B)
4 set a reasonable fee for that inspection.

5 (e) A person who produces or packages a non-potentially
6 hazardous baked good for sale by a religious, charitable, or
7 nonprofit organization for fundraising purposes is exempt from
8 the requirements of this Section.

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

11 (Source: P.A. 100-35, eff. 1-1-18; 100-1069, eff. 8-24-18;
12 101-81, eff. 7-12-19.)

13 (410 ILCS 625/3.6 rep.)

14 Section 10. The Food Handling Regulation Enforcement Act
15 is amended by repealing Section 3.6.