



Sen. Jason Plummer

Filed: 3/5/2024

10300SB2617sam001

LRB103 34813 AWJ 70299 a

1 AMENDMENT TO SENATE BILL 2617

2 AMENDMENT NO. _____. Amend Senate Bill 2617 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Food Handling Regulation Enforcement Act
5 is 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 and a water activity greater than 0.85; or (ii) it is fermented
12 to produce a final equilibrium pH of 4.6 or below.

13 "Canned food" means food that has been heat processed
14 sufficiently under United States Department of Agriculture
15 guidelines to enable storing the food at normal home
16 temperatures.

1 "Cottage food operation" means an operation conducted by a
2 person who produces or packages food or drink, other than
3 foods and drinks listed as prohibited in paragraph (1.5) of
4 subsection (b) of this Section, in a kitchen located in that
5 person's primary domestic residence or another appropriately
6 designed and equipped kitchen on a farm for direct sale by the
7 owner, a family member, or employee.

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

11 "Department" means the Department of Public Health.

12 "Employee" means a person who is employed by and receives
13 monetary compensation from a cottage food operator.

14 "Equilibrium pH" means the final potential of hydrogen
15 measured in an acidified food after all the components of the
16 food have achieved the same acidity.

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

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

1 "Local health department" means a State-certified health
2 department of a unit of local government in which a cottage
3 food operation is located or, if the cottage food operation is
4 located in a county that does not have a local health
5 department, is registered.

6 "Local public health department association" means an
7 association solely representing 2 or more State-certified
8 local health departments.

9 "Low-acid canned food" means any canned food with a
10 finished equilibrium pH greater than 4.6 and a water activity
11 ~~(aw)~~ greater than 0.85.

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

14 "Mobile farmers markets" means a farmers market that is
15 operated from a movable motor drive or propelled vehicle or
16 trailer that can change location, including a farmers market
17 that is owned and operated by a farmer or a third party selling
18 products on behalf of farmers or cottage food operations with
19 the intent of a direct sale to an end consumer.

20 ~~"Potentially hazardous food" means a food that is~~
21 ~~potentially hazardous according to the Department's~~
22 ~~administrative rules. Potentially hazardous food (PHF) in~~
23 ~~general means a food that requires time and temperature~~
24 ~~control for safety (TCS) to limit pathogenic microorganism~~
25 ~~growth or toxin formation.~~

26 "Sprout" means any seedling intended for human consumption

1 that was produced in a manner that does not meet the definition
2 of microgreen.

3 "Time-and-temperature controlled for safety food" means
4 food that is maintained for a specified time at a holding
5 temperature at or below 41 degrees Fahrenheit or at or above
6 135 degrees Fahrenheit in order to ensure its safety and to
7 limit microorganism growth or toxin formation.

8 (b) A cottage food operation may produce homemade food and
9 drink provided that all of the following conditions are met:

10 (1) (Blank).

11 (1.3) A cottage food operation must register with the
12 local health department for the unit of local government
13 in which it is located, but may sell products outside of
14 the unit of local government where the cottage food
15 operation is located. If a county does not have a local
16 health department, the county shall enter into an
17 agreement or contract with a local health department in an
18 adjacent county to register cottage food operations in the
19 jurisdiction of the county that does not have a health
20 department. The adjacent local health department where the
21 cottage food operation registers has the powers described
22 in subsection (d). A copy of the certificate of
23 registration must be available upon request by any local
24 health department.

25 (1.5) A cottage food operation shall not sell or offer
26 to sell the following food items or processed foods

1 containing the following food items, except as indicated:

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

3 (B) dairy, except as an ingredient in a
4 non-potentially hazardous baked good or candy, such as
5 caramel, subject to paragraph (4), or as an ingredient
6 in a baked good frosting, such as buttercream;

7 (C) eggs, except as an ingredient in a food that is
8 not a time-and-temperature controlled for safety food
9 ~~non-potentially hazardous food~~, including dry noodles,
10 or as an ingredient in a baked good frosting, such as
11 buttercream, if the eggs are not raw;

12 (D) pumpkin pies, sweet potato pies, cheesecakes,
13 custard pies, creme pies, and pastries with
14 potentially hazardous fillings or toppings;

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

17 (F) low-acid canned foods;

18 (G) sprouts;

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

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

23 (J) dehydrated tomato or melon;

24 (K) frozen cut melon;

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

26 (M) alcoholic beverages; or

1 (N) kombucha.

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

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

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

20 (2) In order to sell a fermented or acidified food, a
21 cottage food operation shall either:

22 (A) submit a recipe that has been tested by the
23 United States Department of Agriculture or a
24 cooperative extension system located in this State or
25 any other state in the United States; or

26 (B) submit a written food safety plan for each

1 category of products for which the cottage food
2 operator uses the same procedures, such as pickles,
3 kimchi, or hot sauce, and a pH test for a single
4 product that is representative of that category; the
5 written food safety plan shall be submitted annually
6 upon registration and each pH test shall be submitted
7 every 3 years; the food safety plan shall adhere to
8 guidelines developed by the Department.

9 (3) A fermented or acidified food shall be packaged
10 according to one of the following standards:

11 (A) A fermented or acidified food that is canned
12 must be processed in a boiling water bath in a
13 Mason-style jar or glass container with a
14 tight-fitting lid.

15 (B) A fermented or acidified food that is not
16 canned shall be sold in any container that is new,
17 clean, and seals properly and must be stored,
18 transported, and sold at or below 41 degrees.

19 (4) In order to sell a baked good with cheese, a local
20 health department may require a cottage food operation to
21 submit a recipe, at the cottage food operator's expense,
22 to a commercial laboratory to verify that it is
23 non-potentially hazardous before allowing the cottage food
24 operation to sell the baked good as a cottage food.

25 (5) For a cottage food operation that does not utilize
26 a municipal water supply, such as an operation using a

1 private well, a local health department may require a
2 water sample test to verify that the water source being
3 used meets public safety standards related to E. coli
4 coliform. If a test is requested, it must be conducted at
5 the cottage food operator's expense.

6 (6) A person preparing or packaging a product as part
7 of a cottage food operation must be a Department-approved
8 certified food protection manager.

9 (7) Food packaging must conform with the labeling
10 requirements of the Illinois Food, Drug and Cosmetic Act.
11 A cottage food product shall be prepackaged and the food
12 packaging shall be affixed with a prominent label that
13 includes the following:

14 (A) the name of the cottage food operation and
15 unit of local government in which the cottage food
16 operation is located;

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

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

22 (D) all ingredients of the food product, including
23 any color, artificial flavor, and preservative, listed
24 in descending order by predominance of weight shown
25 with the common or usual names;

26 (E) the following phrase in prominent lettering:

1 "This product was produced in a home kitchen not
2 inspected by a health department that may also process
3 common food allergens. If you have safety concerns,
4 contact your local health department.";

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

6 (G) allergen labeling as specified under federal
7 labeling requirements.

8 (8) Food packaging may include the designation
9 "Illinois-grown", "Illinois-sourced", or "Illinois farm
10 product" if the packaged product is a local farm or food
11 product as that term is defined in Section 5 of the Local
12 Food, Farms, and Jobs Act.

13 (9) In the case of a product that is difficult to
14 properly label or package, or for other reasons, the local
15 health department of the location where the product is
16 sold may grant permission to sell products that are not
17 prepackaged, in which case other prominent written notice
18 shall be provided to the purchaser.

19 (10) At the point of sale, notice must be provided in a
20 prominent location that states the following: "This
21 product was produced in a home kitchen not inspected by a
22 health department that may also process common food
23 allergens." At a physical display, notice shall be a
24 placard. Online, notice shall be a message on the cottage
25 food operation's online sales interface at the point of
26 sale.

1 (11) Food and drink produced by a cottage food
2 operation shall be sold directly to consumers for their
3 own consumption and not for resale. Sales directly to
4 consumers include, but are not limited to, sales at or
5 through:

6 (A) farmers' markets;

7 (B) fairs, festivals, public events, or online;

8 (C) pickup from the private home or farm of the
9 cottage food operator, if the pickup is not prohibited
10 by any law of the unit of local government that applies
11 equally to all cottage food operations; in a
12 municipality with a population of 1,000,000 or more, a
13 cottage food operator shall comply with any law of the
14 municipality that applies equally to all home-based
15 businesses;

16 (D) delivery to the customer; ~~and~~

17 (E) pickup from a third-party private property
18 with the consent of the third-party property holder;
19 and

20 (F) mobile farmers markets.

21 (12) Only food that is non-potentially hazardous may
22 be shipped. A cottage food product shall not be shipped
23 out of State. Each cottage food product that is shipped
24 must be sealed in a manner that reveals tampering,
25 including, but not limited to, a sticker or pop top.

26 (13) Alcohol may be used to make extracts, such as

1 vanilla extract, or may be used as an ingredient in baked
2 goods as long as the created product is not intended for
3 use as a beverage.

4 (14) If a product assessment shows that a food has a pH
5 of 4.6 or less or a water activity that is less than or
6 equal to 0.92, the food shall not require temperature
7 control.

8 (c) A local health department shall register any eligible
9 cottage food operation that meets the requirements of this
10 Section and shall issue a certificate of registration with an
11 identifying registration number to each registered cottage
12 food operation. A local health department may establish a
13 self-certification program for cottage food operators to
14 affirm compliance with applicable laws, rules, and
15 regulations. Registration shall be completed annually and the
16 local health department may impose a fee not to exceed \$50.

17 (d) In the event of a consumer complaint or foodborne
18 illness outbreak, upon notice from a different local health
19 department, or if the Department or a local health department
20 has reason to believe that an imminent health hazard exists or
21 that a cottage food operation's product has been found to be
22 misbranded, adulterated, or not in compliance with the
23 conditions for cottage food operations set forth in this
24 Section, the Department or the local health department may:

25 (1) inspect the premises of the cottage food operation
26 in question;

1 (2) set a reasonable fee for the inspection; and

2 (3) invoke penalties and the cessation of the sale of
3 cottage food products until it deems that the situation
4 has been addressed to the satisfaction of the Department
5 or local health department; if the situation is not
6 amenable to being addressed, the local health department
7 may revoke the cottage food operation's registration
8 following a process outlined by the local health
9 department.

10 (e) A local health department that receives a consumer
11 complaint or a report of foodborne illness related to a
12 cottage food operator in another jurisdiction shall refer the
13 complaint or report to the local health department where the
14 cottage food operator is registered.

15 (f) By January 1, 2022, the Department, in collaboration
16 with local public health department associations and other
17 stakeholder groups, shall write and issue administrative
18 guidance to local health departments on the following:

19 (1) development of a standard registration form,
20 including, if applicable, a written food safety plan;

21 (2) development of a Home-Certification Self Checklist
22 Form;

23 (3) development of a standard inspection form and
24 inspection procedures; and

25 (4) procedures for cottage food operation workspaces
26 that include, but are not limited to, cleaning products,

1 general sanitation, and requirements for functional
2 equipment.

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

7 (h) 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 (i) The Department may adopt rules as may be necessary to
15 implement the provisions of this Section.

16 (Source: P.A. 101-81, eff. 7-12-19; 102-633, eff. 1-1-22.)".