

SB0137



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0137

Introduced 1/27/2011, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

410 ILCS 625/4 new
410 ILCS 650/11

from Ch. 56 1/2, par. 77

Amends the Food Handling Regulation Enforcement Act. Sets forth definitions for "cottage food operation" and "non-potentially hazardous food". Provides that notwithstanding any other provision of law, neither the Department of Public Health 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 certain conditions are met. Amends the Sanitary Food Preparation Act to make a corresponding change.

LRB097 06130 RPM 46204 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

A BILL FOR

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 adding Section 4 as follows:

6 (410 ILCS 625/4 new)

7 Sec. 4. Cottage food operation.

8 (a) For the purpose of this Section:

9 "Cottage food operation" means a person who produces or
10 packages non-potentially hazardous food in a kitchen of
11 that person's primary domestic residence.

12 "Non-potentially hazardous food" means a food that is
13 not potentially hazardous food as that term is defined in
14 the Federal Food and Drug Administration Food Code (FDA
15 1999, Pt 1-201.10(B)(61)), which includes, but is not
16 limited to baked goods, jams, jellies, fruit butters,
17 candy, granola, granola bars, vinegar, dried herbs, and dry
18 seasoning blends. "Non-potentially hazardous food" does
19 not include home-canned low-acid or acidified vegetables,
20 home-canned salsa, cheese, garlic in oil, custard pies,
21 home-produced ice products, or any food that requires
22 temperature control for safety.

23 (b) Notwithstanding any other provision of law and except

1 as provided in subsection (c) of this Section, neither the
2 Department of Public Health nor the Department of Agriculture
3 nor the health department of a unit of local government may
4 regulate the service of food by a cottage food operation
5 providing that all of the following conditions are met:

6 (1) The food is a non-potentially hazardous food.

7 (2) The food is to be sold at a farmers' market or
8 community event.

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

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

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

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

18 (C) the ingredients of the food product, listed in
19 descending order by predominance of weight shown with
20 common or usual names;

21 (D) the following phrase: "This product is
22 homemade and not subject to state inspection."; and

23 (E) the date the product was processed.

24 (5) The name and residence of the person preparing and
25 selling products as a cottage food operation is registered
26 with the Department of Public Health and the Department of

1 Agriculture. No fees shall be charged for registration.

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

5 (c) Notwithstanding the provisions of subsection (b) of
6 this Section, if the Department of Public Health has reason to
7 believe that an imminent health hazard exists or a cottage food
8 operation's product has been found to be misbranded,
9 adulterated, or not in compliance with the exception for
10 cottage food operations pursuant to this Section, then it may
11 invoke cessation of sales until it deems that the situation has
12 been addressed to the satisfaction of the Department.

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

15 (410 ILCS 650/11) (from Ch. 56 1/2, par. 77)

16 Sec. 11. Except as hereinafter provided and as provided in
17 Section 4 of the Food Handling Regulation Enforcement Act, the
18 Department of Public Health shall enforce this Act, and for
19 that purpose it may at all times enter every such building,
20 room, basement, inclosure or premises occupied or used or
21 suspected of being occupied or used for the production,
22 preparation or manufacture for sale, or the storage, sale,
23 distribution or transportation of such food, to inspect the
24 premises and all utensils, fixtures, furniture and machinery

1 used as aforesaid; and if upon inspection any such food
2 producing or distribution establishment, conveyance, or
3 employer, employee, clerk, driver or other person is found to
4 be violating any of the provisions of this Act, or if the
5 production, preparation, manufacture, packing, storage, sale,
6 distribution or transportation of such food is being conducted
7 in a manner detrimental to the health of the employees and
8 operatives, or to the character or quality of the food therein
9 being produced, manufactured, packed, stored, sold,
10 distributed or conveyed, the officer or inspector making the
11 inspection or examination shall report such conditions and
12 violations to the Department. The Department of Agriculture
13 shall have exclusive jurisdiction for the enforcement of this
14 Act insofar as it relates to establishments defined by Section
15 2.5 of "The Meat and Poultry Inspection Act", approved July 22,
16 1959, as heretofore or hereafter amended. The Department of
17 Agriculture or Department of Public Health, as the case may be,
18 shall thereupon issue a written order to the person, firm or
19 corporation responsible for the violation or condition
20 aforesaid to abate such condition or violation or to make such
21 changes or improvements as may be necessary to abate them,
22 within such reasonable time as may be required. Notice of the
23 order may be served by delivering a copy thereof to the person,
24 firm or corporation, or by sending a copy thereof by registered
25 mail, and the receipt thereof through the post office shall be
26 prima facie evidence that notice of the order has been

1 received. Such person, firm or corporation may appear in person
2 or by attorney before the Department of Agriculture or the
3 Department of Public Health, as the case may be, within the
4 time limited in the order, and shall be given an opportunity to
5 be heard and to show why such order or instructions should not
6 be obeyed. The hearing shall be under such rules and
7 regulations as may be prescribed by the Department of
8 Agriculture or the Department of Public Health, as the case may
9 be. If after such hearing it appears that this Act has not been
10 violated, the order shall be rescinded. If it appears that this
11 Act is being violated, and that the person, firm or corporation
12 notified is responsible therefor, the previous order shall be
13 confirmed or amended, as the facts shall warrant, and shall
14 thereupon be final, but such additional time as is necessary
15 may be granted within which to comply with the final order. If
16 such person, firm or corporation is not present or represented
17 when such final order is made, notice thereof shall be given as
18 above provided. On failure of the party or parties to comply
19 with the first order of the Department of Agriculture or the
20 Department of Public Health, as the case may be, within the
21 time prescribed, when no hearing is demanded, or upon failure
22 to comply with the final order within the time specified, the
23 Department shall certify the facts to the State's Attorney of
24 the county in which such violation occurred, and such State's
25 Attorney shall proceed against the party or parties for the
26 fines and penalties provided by this Act, and also for the

1 abatement of the nuisance: Provided, that the proceedings
2 herein prescribed for the abatement of nuisances as defined in
3 this Act shall not in any manner relieve the violator from
4 prosecution in the first instance for every such violation, nor
5 from the penalties for such violation prescribed by Section 13.
6 (Source: P.A. 81-1509.)