

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 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 that
11 person's primary domestic residence for direct sale by the
12 owner or a family member, stored in the residence where the
13 food is made.

14 "Potentially hazardous food" means a food that is
15 potentially hazardous according to the Federal Food and Drug
16 Administration 2009 Food Code (FDA 2009 Food Code) or any
17 subsequent amendments to the FDA 2009 Food Code. Potentially
18 hazardous food (PHF) in general means a food that requires time
19 and temperature control for safety (TCS) to limit pathogenic
20 microorganism growth or toxin formation. In accordance with the
21 FDA 2009 Food Code, potentially hazardous food does not include
22 a food item that because of its pH or Aw value, or interaction
23 of Aw and pH values, is designated as a non-PHF/non-TCS food in

1 Table A or B of the FDA 2009 Food Code's potentially hazardous
2 food definition.

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

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

12 The following provisions shall apply:

13 (A) The following jams, jellies and preserves are
14 allowed: apple, apricot, grape, peach, plum, quince,
15 orange, nectarine, tangerine, blackberry, raspberry,
16 blueberry, boysenberry, cherry, cranberry, strawberry,
17 red currants, or a combination of these fruits.
18 Rhubarb, tomato, and pepper jellies or jams are not
19 allowed. Any other jams, jellies, or preserves not
20 listed may be produced by a cottage food operation
21 provided their recipe has been tested and documented by
22 a commercial laboratory, at the expense of the cottage
23 food operation, as being not potentially hazardous,
24 containing a pH equilibrium of less than 4.6.

25 (B) The following fruit butters are allowed:
26 apple, apricot, grape, peach, plum, quince, and prune.

1 Pumpkin butter, banana butter, and pear butter are not
2 allowed. Fruit butters not listed may be produced by a
3 cottage food operation provided their recipe has been
4 tested and documented by a commercial laboratory, at
5 the expense of the cottage food operation, as being not
6 potentially hazardous, containing a pH equilibrium of
7 less than 4.6.

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

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

26 (3) Gross receipts from the sale of food exempted under

1 this Section do not exceed \$25,000 in a calendar year.

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

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

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

9 (C) all ingredients of the food product, including
10 any colors, artificial flavors, and preservatives,
11 listed in descending order by predominance of weight
12 shown with common or usual names;

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

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

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

20 (5) The name and residence of the person preparing and
21 selling products as a cottage food operation is registered
22 with the health department of a unit of local government
23 where the cottage food operation resides. No fees shall be
24 charged for registration.

25 (6) The person preparing and selling products as a
26 cottage food operation has a Department of Public Health

1 approved Food Service Sanitation Management Certificate.

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

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

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

19 (410 ILCS 650/11) (from Ch. 56 1/2, par. 77)

20 Sec. 11. Except as hereinafter provided and as provided in
21 Section 4 of the Food Handling Regulation Enforcement Act, the
22 Department of Public Health shall enforce this Act, and for
23 that purpose it may at all times enter every such building,
24 room, basement, inclosure or premises occupied or used or

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

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

1 Department shall certify the facts to the State's Attorney of
2 the county in which such violation occurred, and such State's
3 Attorney shall proceed against the party or parties for the
4 fines and penalties provided by this Act, and also for the
5 abatement of the nuisance: Provided, that the proceedings
6 herein prescribed for the abatement of nuisances as defined in
7 this Act shall not in any manner relieve the violator from
8 prosecution in the first instance for every such violation, nor
9 from the penalties for such violation prescribed by Section 13.
10 (Source: P.A. 81-1509.)