

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

18 "Potentially hazardous food" means a food that is  
19 potentially hazardous according to the Federal Food and Drug  
20 Administration 2009 Food Code (FDA 2009 Food Code) or any  
21 subsequent amendments to the FDA 2009 Food Code. Potentially  
22 hazardous food (PHF) in general means a food that requires time  
23 and temperature control for safety (TCS) to limit pathogenic

1 microorganism growth or toxin formation. In accordance with the  
2 FDA 2009 Food Code, potentially hazardous food does not include  
3 a food item that because of its pH or Aw value, or interaction  
4 of Aw and pH values, is designated as a non-PHF/non-TCS food in  
5 Table A or B of the FDA 2009 Food Code's potentially hazardous  
6 food definition.

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

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

17 The following provisions shall apply:

18 (A) The following jams, jellies and preserves are  
19 allowed: apple, apricot, grape, peach, plum, quince,  
20 orange, nectarine, tangerine, blackberry, raspberry,  
21 blueberry, boysenberry, cherry, cranberry, strawberry,  
22 red currants, or a combination of these fruits.  
23 Rhubarb, tomato, and pepper jellies or jams are not  
24 allowed. Any other jams, jellies, or preserves not  
25 listed may be produced by a cottage food operation  
26 provided their recipe has been tested and documented by

1 a commercial laboratory, at the expense of the cottage  
2 food operation, as being not potentially hazardous,  
3 containing a pH equilibrium of less than 4.6.

4 (B) The following fruit butters are allowed:  
5 apple, apricot, grape, peach, plum, quince, and prune.  
6 Pumpkin butter, banana butter, and pear butter are not  
7 allowed. Fruit butters not listed may be produced by a  
8 cottage food operation provided their recipe has been  
9 tested and documented by a commercial laboratory, at  
10 the expense of the cottage food operation, as being not  
11 potentially hazardous, containing a pH equilibrium of  
12 less than 4.6.

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

1 cottage food operation: pumpkin pie, sweet potato pie,  
2 cheesecake, custard pies, crème pies, and pastries  
3 with potentially hazardous fillings or toppings.

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

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

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

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

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

14 (C) all ingredients of the food product, including  
15 any colors, artificial flavors, and preservatives,  
16 listed in descending order by predominance of weight  
17 shown with common or usual names;

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

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

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

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

1 with the health department of a unit of local government  
2 where the cottage food operation resides. No fees shall be  
3 charged for registration.

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

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

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

22 (d) Notwithstanding the provisions of subsection (b) of  
23 this Section, a State-certified local public health department  
24 may, upon providing a written statement to the Department of  
25 Public Health, regulate the service of food by a cottage food  
26 operation. The regulation by a State-certified local public

1 health department may include all of the following  
2 requirements:

3 (1) That the cottage food operation (A) register with  
4 the State-certified local public health department, which  
5 may include a reasonable fee set by the State-certified  
6 local public health department notwithstanding paragraph  
7 (5) of subsection (b) of this Section and (B) agree in  
8 writing at the time of registration to grant access to the  
9 State-certified local public health department to conduct  
10 an inspection of the cottage food operation's primary  
11 domestic residence in the event of a consumer complaint or  
12 foodborne illness outbreak.

13 (2) That in the event of a consumer complaint or  
14 foodborne illness outbreak the State-certified local  
15 public health department is allowed to (A) inspect the  
16 premises of the cottage food operation in question and (B)  
17 set a reasonable fee for that inspection.

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

20 (410 ILCS 650/11) (from Ch. 56 1/2, par. 77)

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

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

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



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