



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2486

Introduced 2/18/2015, by Rep. Michael W. Tryon

SYNOPSIS AS INTRODUCED:

410 ILCS 625/3.3
410 ILCS 625/3.6
410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Provides that a home kitchen operation does not include a person who produces or packages non-potentially hazardous baked goods for sale by a religious, charitable, or nonprofit organization for fundraising purposes. Adds additional requirements in order to qualify as a home kitchen operation. Makes changes concerning the jurisdiction of the local governing body over home kitchen operations. Defines a term. Removes a provision prohibiting certain types of jams and jellies from cottage food operations. Increases the gross receipt threshold of exempt food from \$25,000 to \$36,000. Allows the Department to adopt rules to implement the requirements of the amendatory Act.

LRB099 10188 JLK 30412 b

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 Sections 3.3 and 4 and by renumbering and
6 changing Section 3.4 as added by Public Act 98-643 as follows:

7 (410 ILCS 625/3.3)

8 Sec. 3.3. Farmers' markets.

9 (a) The General Assembly finds as follows:

10 (1) Farmers' markets, as defined in subsection (b) of
11 this Section, provide not only a valuable marketplace for
12 farmers and food artisans to sell their products directly
13 to consumers, but also a place for consumers to access
14 fresh fruits, vegetables, and other agricultural products.

15 (2) Farmers' markets serve as a stimulator for local
16 economies and for thousands of new businesses every year,
17 allowing farmers to sell directly to consumers and capture
18 the full retail value of their products. They have become
19 important community institutions and have figured in the
20 revitalization of downtown districts and rural
21 communities.

22 (3) Since 1999, the number of farmers' markets has
23 tripled and new ones are being established every year.

1 There is a lack of consistent regulation from one county to
2 the next, resulting in confusion and discrepancies between
3 counties regarding how products may be sold.

4 (4) In 1999, the Department of Public Health published
5 Technical Information Bulletin/Food #30 in order to
6 outline the food handling and sanitation guidelines
7 required for farmers' markets, producer markets, and other
8 outdoor food sales events.

9 (5) While this bulletin was revised in 2010, there
10 continues to be inconsistencies, confusion, and lack of
11 awareness by consumers, farmers, markets, and local health
12 authorities of required guidelines affecting farmers'
13 markets from county to county.

14 (b) For the purposes of this Section:

15 "Department" means the Department of Public Health.

16 "Director" means the Director of Public Health.

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

21 (c) In order to facilitate the orderly and uniform
22 statewide implementation of the standards established in the
23 Department of Public Health's administrative rules for this
24 Act, the Farmers' Market Task Force shall be formed by the
25 Director to assist the Department in implementing statewide
26 administrative regulations for farmers' markets.

1 (d) This Act does not intend and shall not be construed to
2 limit the power of counties, municipalities, and other local
3 government units to regulate farmers' markets for the
4 protection of the public health, safety, morals, and welfare,
5 including, but not limited to, licensing requirements and time,
6 place, and manner restrictions. This Act provides for a
7 statewide scheme for the orderly and consistent interpretation
8 of the Department of Public Health administrative rules
9 pertaining to the safety of food and food products sold at
10 farmers' markets.

11 (e) The Farmers' Market Task Force shall consist of at
12 least 24 members appointed within 60 days after the effective
13 date of this Section. Task Force members shall consist of:

14 (1) one person appointed by the President of the
15 Senate;

16 (2) one person appointed by the Minority Leader of the
17 Senate;

18 (3) one person appointed by the Speaker of the House of
19 Representatives;

20 (4) one person appointed by the Minority Leader of the
21 House of Representatives;

22 (5) the Director of Public Health or his or her
23 designee;

24 (6) the Director of Agriculture or his or her designee;

25 (7) a representative of a general agricultural
26 production association appointed by the Department of

1 Agriculture;

2 (8) three representatives of local county public
3 health departments appointed by the Director and selected
4 from 3 different counties representing each of the
5 northern, central, and southern portions of this State;

6 (9) four members of the general public who are engaged
7 in local farmers' markets appointed by the Director of
8 Agriculture;

9 (10) a representative of an association representing
10 public health administrators appointed by the Director;

11 (11) a representative of an organization of public
12 health departments that serve the City of Chicago and the
13 counties of Cook, DuPage, Kane, Kendall, Lake, McHenry,
14 Will, and Winnebago appointed by the Director;

15 (12) a representative of a general public health
16 association appointed by the Director;

17 (13) the Director of Commerce and Economic Opportunity
18 or his or her designee;

19 (14) the Lieutenant Governor or his or her designee;
20 and

21 (15) five farmers who sell their farm products at
22 farmers' markets appointed by the Lieutenant Governor or
23 his or her designee.

24 Task Force members' terms shall be for a period of 2 years,
25 with ongoing appointments made according to the provisions of
26 this Section.

1 (f) The Task Force shall be convened by the Director or his
2 or her designee. Members shall elect a Task Force Chair and
3 Co-Chair.

4 (g) Meetings may be held via conference call, in person, or
5 both. Three members of the Task Force may call a meeting as
6 long as a 5-working-day notification is sent via mail, e-mail,
7 or telephone call to each member of the Task Force.

8 (h) Members of the Task Force shall serve without
9 compensation.

10 (i) The Task Force shall undertake a comprehensive and
11 thorough review of the current Statutes and administrative
12 rules that define which products and practices are permitted
13 and which products and practices are not permitted at farmers'
14 markets and to assist the Department in developing statewide
15 administrative regulations for farmers' markets.

16 (j) The Task Force shall advise the Department regarding
17 the content of any administrative rules adopted under this
18 Section and Sections 3.4, 3.5, and 4 this Act prior to adoption
19 of the rules. Any administrative rules, except emergency rules
20 adopted pursuant to Section 5-45 of the Illinois Administrative
21 Procedure Act, adopted without obtaining the advice of the Task
22 Force are null and void. If the Department fails to follow the
23 advice of the Task Force, the Department shall, prior to
24 adopting the rules, transmit a written explanation to the Task
25 Force. If the Task Force, having been asked for its advice,
26 fails to advise the Department within 90 days after receiving

1 the rules for review, the rules shall be considered to have
2 been approved by the Task Force.

3 (k) The Department of Public Health shall provide staffing
4 support to the Task Force and shall help to prepare, print, and
5 distribute all reports deemed necessary by the Task Force.

6 (l) The Task Force may request assistance from any entity
7 necessary or useful for the performance of its duties. The Task
8 Force shall issue a report annually to the Secretary of the
9 Senate and the Clerk of the House.

10 (m) The following provisions shall apply concerning
11 statewide farmers' market food safety guidelines:

12 (1) The Director, in accordance with this Section,
13 shall adopt administrative rules (as provided by the
14 Illinois Administrative Procedure Act) for foods found at
15 farmers' markets.

16 (2) The rules and regulations described in this Act
17 shall be consistently enforced by local health authorities
18 throughout the State.

19 (2.5) Notwithstanding any other provision of law
20 except as provided in this Act, local public health
21 departments and all other units of local government are
22 prohibited from creating sanitation guidelines, rules, or
23 regulations for farmers' markets that are more stringent
24 than those farmers' market sanitation regulations
25 contained in the administrative rules adopted by the
26 Department for the purposes of implementing this Section

1 ~~3.3~~ and Sections 3.4, 3.5, and 4 of this Act. Except as
2 provided for in Sections ~~Section~~ 3.4 and 4 of this Act,
3 this Act does not intend and shall not be construed to
4 limit the power of local health departments and other
5 government units from requiring licensing and permits for
6 the sale of commercial food products, processed food
7 products, prepared foods, and potentially hazardous foods
8 at farmers' markets or conducting related inspections and
9 enforcement activities, so long as those permits and
10 licenses do not include unreasonable fees or sanitation
11 provisions and rules that are more stringent than those
12 laid out in the administrative rules adopted by the
13 Department for the purposes of implementing this Section
14 ~~3.3~~ and Sections 3.4, 3.5, and 4 of this Act.

15 (3) In the case of alleged non-compliance with the
16 provisions described in this Act, local health departments
17 shall issue written notices to vendors and market managers
18 of any noncompliance issues.

19 (4) Produce and food products coming within the scope
20 of the provisions of this Act shall include, but not be
21 limited to, raw agricultural products, including fresh
22 fruits and vegetables; popcorn, grains, seeds, beans, and
23 nuts that are whole, unprocessed, unpackaged, and
24 unsprouted; fresh herb springs and dried herbs in bunches;
25 baked goods sold at farmers' markets; cut fruits and
26 vegetables; milk and cheese products; ice cream; syrups;

1 wild and cultivated mushrooms; apple cider and other fruit
2 and vegetable juices; herb vinegar; garlic-in-oil;
3 flavored oils; pickles, relishes, salsas, and other canned
4 or jarred items; shell eggs; meat and poultry; fish;
5 ready-to-eat foods; commercially produced prepackaged food
6 products; and any additional items specified in the
7 administrative rules adopted by the Department to
8 implement Section 3.3 of this Act.

9 (n) Local health department regulatory guidelines may be
10 applied to foods not often found at farmers' markets, all other
11 food products not regulated by the Department of Agriculture
12 and the Department of Public Health, as well as live animals to
13 be sold at farmers' markets.

14 (o) The Task Force shall issue annual reports to the
15 Secretary of the Senate and the Clerk of the House with
16 recommendations for the development of administrative rules as
17 specified. The first report shall be issued no later than
18 December 31, 2012.

19 (p) The Department of Public Health and the Department of
20 Agriculture, in conjunction with the Task Force, shall adopt
21 administrative rules necessary to implement, interpret, and
22 make specific the provisions of this Act, including, but not
23 limited to, rules concerning labels, sanitation, and food
24 product safety according to the realms of their jurisdiction in
25 accordance with subsection (j) of this Section. ~~The Task Force~~
26 ~~shall submit recommendations for administrative rules to the~~

1 ~~Department no later than December 15, 2014.~~

2 (q) The Department and the Task Force shall work together
3 to create a food sampling training and license program as
4 specified in Section 3.4 of this Act.

5 (Source: P.A. 97-394, eff. 8-16-11; 98-660, eff. 6-23-14.)

6 (410 ILCS 625/3.6)

7 Sec. 3.6 ~~3.4~~. Home kitchen operation.

8 (a) For the purpose of this Section, "home kitchen
9 operation" means a person who produces or packages
10 non-potentially hazardous baked goods ~~food~~ in a kitchen of that
11 person's primary domestic residence for direct sale by the
12 owner or a family member. As used in this Section, "baked good"
13 has the meaning given to that term under subparagraph (C) of
14 paragraph (1) of subsection (b) of Section 4 of this Act. A
15 home kitchen operation does not include a person who produces
16 or packages non-potentially hazardous baked goods for sale by a
17 religious, charitable, or nonprofit organization for
18 fundraising purposes; the production or packaging of
19 non-potentially hazardous baked goods for these purposes is
20 exempt from the requirements of this Act ~~, or for sale by a~~
21 ~~religious, charitable, or nonprofit organization, stored in~~
22 ~~the residence where the food is made.~~ The following conditions
23 must be met in order to qualify as a home kitchen operation:

24 (1) Monthly gross sales do not exceed \$1,000.

25 (2) The food is ~~not~~ a non-potentially ~~potentially~~

1 hazardous baked good food, as described ~~defined~~ in Section
2 4 of this Act.

3 (3) A notice is provided to the purchaser that the
4 product was produced in a home kitchen.

5 (4) The food package is affixed with a label that
6 includes:

7 (i) the common or usual name of the food product;

8 and

9 (ii) allergen labeling as specified in federal
10 labeling requirements by the United States Food and
11 Drug Administration.

12 (5) The food is sold directly to the consumer.

13 (6) The food is stored in the residence where it is
14 produced or packaged.

15 (b) The Department of Public Health or the health
16 department of a unit of local government may inspect a home
17 kitchen operation in the event of a complaint or disease
18 outbreak.

19 (c) The requirements of this ~~This~~ Section apply ~~applies~~
20 only to a home kitchen operation located in a municipality,
21 township, or county where the local governing body having the
22 jurisdiction to enforce this Act or the rules adopted under
23 this Act has adopted an ordinance authorizing home kitchen
24 operations ~~the direct sale of baked goods as described in~~
25 ~~Section 4 of this Act.~~

26 (Source: P.A. 98-643, eff. 6-10-14; revised 10-20-14.)

1 (410 ILCS 625/4)

2 Sec. 4. Cottage food operation.

3 (a) For the purpose of this Section:

4 "Cottage food operation" means an operation conducted by a
5 person who produces or packages non-potentially hazardous food
6 in a kitchen located in that person's primary domestic
7 residence or another appropriately designed and equipped
8 residential or commercial-style kitchen on that property for
9 direct sale by the owner, ~~or~~ a family member, or employee
10 stored in the residence or appropriately designed and equipped
11 residential or commercial-style kitchen on that property where
12 the food is made.

13 "Department" means the Department of Public Health.

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

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

1 toxin formation.

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

9 (1) The food is ~~not~~ a non-potentially ~~potentially~~
10 hazardous baked good, jam, jelly, preserve, fruit butter,
11 dry herb, dry herb blend, ~~or~~ dry tea blend, or similar
12 product as adopted and specified by Department rules
13 pursuant to subsection (e) of this Section, and is intended
14 for end-use only. The following provisions shall apply:

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

1 been specified and adopted as allowed in
2 administrative rules by the Department pursuant to
3 subsection (e) of this Section.

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 or has been specified and adopted as
13 allowed in administrative rules by the Department
14 pursuant to subsection (e) of this Section.

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

1 of less than 4.6 or has been specified and adopted as
2 allowed in administrative rules by the Department
3 pursuant to subsection (e) of this Section. The
4 following are potentially hazardous and prohibited
5 from production and sale by a cottage food operation:
6 pumpkin pie, sweet potato pie, cheesecake, custard
7 pies, creme pies, and pastries with potentially
8 hazardous fillings or toppings.

9 (2) The food is to be sold at a farmers' market, with
10 the exception that cottage foods that have a locally grown
11 agricultural product as the main ingredient may be sold on
12 the farm where the agricultural product is grown or
13 delivered directly to the consumer.

14 (3) Gross receipts from the sale of food exempted under
15 this Section do not exceed \$36,000 ~~\$25,000~~ in a calendar
16 year.

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

21 (A) the name and address of the cottage food
22 operation;

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

24 (C) all ingredients of the food product, including
25 any colors, artificial flavors, and preservatives,
26 listed in descending order by predominance of weight

1 shown with common or usual names;

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

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

7 (F) allergen labeling as specified in federal
8 labeling requirements.

9 (5) The name and residence of the person preparing and
10 selling products as a cottage food operation is registered
11 with the health department of a unit of local government
12 where the cottage food operation resides. No fees shall be
13 charged for registration. Registration shall be for a
14 minimum period of one year.

15 (6) The person preparing or packaging ~~and selling~~
16 products as a cottage food operation has a Department
17 approved Food Service Sanitation Management Certificate.

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

23 (c) Notwithstanding the provisions of subsection (b) of
24 this Section, if the Department or the health department of a
25 unit of local government has received a consumer complaint or
26 has reason to believe that an imminent health hazard exists or

1 that a cottage food operation's product has been found to be
2 misbranded, adulterated, or not in compliance with the
3 exception for cottage food operations pursuant to this Section,
4 then it may invoke cessation of sales until it deems that the
5 situation has been addressed to the satisfaction of the
6 Department.

7 (d) Notwithstanding the provisions of subsection (b) of
8 this Section, a State-certified local public health department
9 may, upon providing a written statement to the Department,
10 regulate the service of food by a cottage food operation. The
11 regulation by a State-certified local public health department
12 may include all of the following requirements:

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

24 (2) That in the event of a consumer complaint or
25 foodborne illness outbreak the State-certified local
26 public health department is allowed to (A) inspect the

1 premises of the cottage food operation in question and (B)
2 set a reasonable fee for that inspection.

3 (e) The Department may adopt rules as may be necessary to
4 implement the provisions of this Section.

5 (Source: P.A. 97-393, eff. 1-1-12; 98-660, eff. 6-23-14.)