

AN ACT concerning public health.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Food Handling Regulation Enforcement Act is amended by changing Sections 3.3 and 4 and by adding Sections 3.4 and 3.5 as follows:

(410 ILCS 625/3.3)

Sec. 3.3. Farmers' markets.

(a) The General Assembly finds as follows:

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

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

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

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

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

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

(b) For the purposes of this Section:

"Department" means the Department of Public Health.

"Director" means the Director of Public Health.

"Farmers' market" means a common facility or area where the primary purpose is for farmers to gather to sell a variety of fresh fruits and vegetables and other locally produced farm and food products directly to consumers. ~~Local food artisans may participate at farmers' markets.~~

(c) In order to facilitate the orderly and uniform statewide implementation of the standards established in the Department of Public Health's administrative rules for this Act ~~interpretation of the Department of Public Health's Technical Information Bulletin/Food #30,~~ the Farmers' Market Task Force

shall be formed by the Director to assist the Department in implementing statewide administrative regulations for farmers' markets.

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

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

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

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

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

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

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

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

(7) a representative of a general agricultural production association appointed by the Department of Agriculture;

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The Task Force shall advise the Department regarding the content of any administrative rules adopted under this Act prior to adoption of the rules. Any administrative rules, except emergency rules adopted pursuant to Section 5-45 of the Illinois Administrative Procedure Act, adopted without obtaining the advice of the Task Force are null and void. If the Department fails to follow the advice of the Task Force, the Department shall, prior to adopting the rules, transmit a

written explanation to the Task Force. If the Task Force, having been asked for its advice, fails to advise the Department within 90 days after receiving the rules for review, the rules shall be considered to have been approved by the Task Force. ~~The Task Force shall assist the Department of Public Health and the Department of Agriculture in developing administrative regulations and procedures regarding the implementation of the various Acts that define which products and practices are permitted and which products and practices are not permitted at farmers' markets.~~

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

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

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

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

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

(2.5) Notwithstanding any other provision of law except as provided in this Act, local public health departments and all other units of local government are prohibited from creating sanitation guidelines, rules, or regulations for farmers' markets that are more stringent than those farmers' market sanitation regulations contained in the administrative rules adopted by the Department for the purposes of implementing Section 3.3 of this Act. Except as provided for in Section 3.4 of this Act, this Act does not intend and shall not be construed to limit the power of local health departments and other government units from requiring licensing and permits for the sale of commercial food products, processed food products, prepared foods, and potentially hazardous foods at farmers' markets or conducting related inspections and enforcement activities, so long as those permits and licenses do not include unreasonable fees or sanitation provisions and rules that are more stringent than those laid out in the administrative rules adopted by the Department for the purposes of implementing Section 3.3 of this Act.

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

(4) Produce and food products coming within the scope

of the provisions of this Act shall include, but not be limited to, raw agricultural products, including fresh fruits and vegetables; popcorn, grains, seeds, beans, and nuts that are whole, unprocessed, unpackaged, and unsprouted; fresh herb springs and dried herbs in bunches; baked goods sold at farmers' markets; cut fruits and vegetables; milk and cheese products; ice cream; syrups; wild and cultivated mushrooms; apple cider and other fruit and vegetable juices; herb vinegar; garlic-in-oil; flavored oils; pickles, relishes, salsas, and other canned or jarred items; shell eggs; meat and poultry; fish; ready-to-eat foods; and commercially produced prepackaged food products; and any additional items specified in the administrative rules adopted by the Department to implement Section 3.3 of this Act.

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

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

(p) The Department of Public Health and the Department of

Agriculture, in conjunction with the Task Force, shall adopt administrative rules necessary to implement, interpret, and make specific the provisions of this Act, including, but not limited to, rules concerning labels, sanitation, and food product safety according to the realms of their jurisdiction in accordance with subsection (j) of this Section. The Task Force shall submit recommendations for administrative rules to the Department no later than December 15, 2014.

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

(Source: P.A. 97-394, eff. 8-16-11.)

(410 ILCS 625/3.4 new)

Sec. 3.4. Product samples.

(a) For the purpose of this Section, "food product sampling" means food product samples distributed free of charge for promotional or educational purposes only.

(b) Notwithstanding any other provision of law, except as provided in subsection (c) of this Section, a vendor who engages in food product sampling at a farmers' market may do so without obtaining a State or local permit to provide those food product samples, provided the vendor complies with the State and local permit requirements to sell the food product to be sampled and with the food preparation, food handling, food storage, and food sampling requirements specified in the

administrative rules adopted by the Department to implement Section 3.3 and Section 3.4 of this Act.

The Department of Public Health is instructed to work with the Farmers' Market Task Force as created in Section 3.3 of this Act to establish a food sampling at farmers' market training and certification program to fulfill this requirement. The Department shall adopt rules for the food sampling training and certification program and product sampling requirements at farmers' markets in accordance with subsection (j) of Section 3.3. The Department may charge a reasonable fee for the training and certification program. The Department may delegate or contract authority to administer the food sampling training to other qualified public and private entities.

(c) Notwithstanding the provisions of subsection (b) of this Section, the Department of Public Health, the Department of Agriculture, a local municipal health department, or a certified local health department may inspect a vendor at a farmers' market to ensure compliance with the provisions in this Section. If an imminent health hazard exists or a vendor's product has been found to be misbranded, adulterated, or not in compliance with the permit exemption for vendors pursuant to this Section, then the regulatory authority may invoke cessation of sales until it deems that the situation has been addressed.

(410 ILCS 625/3.5 new)

Sec. 3.5. Product origin.

(a) All vendors or booths selling specialty crops and raw agricultural commodities at a farmers' market in Illinois must post at the point of sale a placard or include on a label or packing slip the physical address of the farm or farms on which those products were grown or produced.

Specialty crops and raw agricultural commodities purchased through wholesale or retail markets may be offered for resale at a farmers' market. If the physical address of the farm or farms where the products were grown or produced is unknown, then the vendor must post at the point of sale a placard or include on a label or packing slip the physical address and business name, when applicable, where the products were purchased.

(b) Specialty crops and raw agricultural commodities direct marketed at farmers' markets that do not include a placard at the point of sale or on a label or packing slip stating the physical location of the farm on which those products were grown or produced shall be considered misbranded.

(c) Any related federal rules or regulations adopted through the implementation of the federal Food Safety Modernization Act regarding transparency, traceability, and product origin labeling pertaining to specialty crops and raw agricultural commodities shall supersede the provisions of this Section.

(410 ILCS 625/4)

Sec. 4. Cottage food operation.

(a) For the purpose of this Section:

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

"Department" means the Department of Public Health.

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

"Potentially hazardous food" means a food that is potentially hazardous according to the Department's administrative rules ~~the Federal Food and Drug Administration 2009 Food Code (FDA 2009 Food Code) or any subsequent amendments to the FDA 2009 Food Code.~~ Potentially hazardous food (PHF) in general means a food that requires time and temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation. ~~In accordance with the~~

~~FDA 2009 Food Code, potentially hazardous food does not include a food item that because of its pH or Aw value, or interaction of Aw and pH values, is designated as a non-PHF/non-TCS food in Table A or B of the FDA 2009 Food Code's potentially hazardous food definition.~~

(b) Notwithstanding any other provision of law and except as provided in subsections (c) and (d) of this Section, 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 all of the following conditions are met:

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

The following provisions shall apply:

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

food operation, as being not potentially hazardous, containing a pH equilibrium of less than 4.6.

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

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

cheesecake, custard pies, creme pies, and pastries with potentially hazardous fillings or toppings.

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

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

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

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

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

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

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

(E) the date the product was processed; and

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

(5) The name and residence of the person preparing and selling products as a cottage food operation is registered with the health department of a unit of local government

where the cottage food operation resides. No fees shall be charged for registration. Registration shall be for a minimum period of one year.

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

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

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

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

health department may include all of the following requirements:

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

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

(Source: P.A. 97-393, eff. 1-1-12.)

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

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

Sec. 11. Except as hereinafter provided and as provided in

Sections 3.3, 3.4, and 4 of the Food Handling Regulation Enforcement Act, the Department of Public Health shall enforce this Act, and for that purpose it may at all times enter every such building, room, basement, inclosure or premises occupied or used or suspected of being occupied or used for the production, preparation or manufacture for sale, or the storage, sale, distribution or transportation of such food, to inspect the premises and all utensils, fixtures, furniture and machinery used as aforesaid; and if upon inspection any such food producing or distribution establishment, conveyance, or employer, employee, clerk, driver or other person is found to be violating any of the provisions of this Act, or if the production, preparation, manufacture, packing, storage, sale, distribution or transportation of such food is being conducted in a manner detrimental to the health of the employees and operatives, or to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the inspection or examination shall report such conditions and violations to the Department. The Department of Agriculture shall have exclusive jurisdiction for the enforcement of this Act insofar as it relates to establishments defined by Section 2.5 of "The Meat and Poultry Inspection Act", approved July 22, 1959, as heretofore or hereafter amended. The Department of Agriculture or Department of Public Health, as the case may be, shall thereupon issue a written order to the person, firm or

corporation responsible for the violation or condition aforesaid to abate such condition or violation or to make such changes or improvements as may be necessary to abate them, within such reasonable time as may be required. Notice of the order may be served by delivering a copy thereof to the person, firm or corporation, or by sending a copy thereof by registered mail, and the receipt thereof through the post office shall be prima facie evidence that notice of the order has been received. Such person, firm or corporation may appear in person or by attorney before the Department of Agriculture or the Department of Public Health, as the case may be, within the time limited in the order, and shall be given an opportunity to be heard and to show why such order or instructions should not be obeyed. The hearing shall be under such rules and regulations as may be prescribed by the Department of Agriculture or the Department of Public Health, as the case may be. If after such hearing it appears that this Act has not been violated, the order shall be rescinded. If it appears that this Act is being violated, and that the person, firm or corporation notified is responsible therefor, the previous order shall be confirmed or amended, as the facts shall warrant, and shall thereupon be final, but such additional time as is necessary may be granted within which to comply with the final order. If such person, firm or corporation is not present or represented when such final order is made, notice thereof shall be given as above provided. On failure of the party or parties to comply

with the first order of the Department of Agriculture or the Department of Public Health, as the case may be, within the time prescribed, when no hearing is demanded, or upon failure to comply with the final order within the time specified, the Department shall certify the facts to the State's Attorney of the county in which such violation occurred, and such State's Attorney shall proceed against the party or parties for the fines and penalties provided by this Act, and also for the abatement of the nuisance: Provided, that the proceedings herein prescribed for the abatement of nuisances as defined in this Act shall not in any manner relieve the violator from prosecution in the first instance for every such violation, nor from the penalties for such violation prescribed by Section 13. (Source: P.A. 97-393, eff. 1-1-12; 97-394, eff. 8-16-11; 97-813, eff. 7-13-12.)

Section 99. Effective date. This Act takes effect upon becoming law.