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1 AMENDMENT TO SENATE BILL 840

2 AMENDMENT NO. _____. Amend Senate Bill 840 by replacing
3 everything after the enacting clause with the following:

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

1 consumers.

2 "Potentially hazardous food" means a food that is
3 potentially hazardous according to the Federal Food and Drug
4 Administration 2009 Food Code (FDA 2009 Food Code) or any
5 subsequent amendments to the FDA 2009 Food Code. Potentially
6 hazardous food (PHF) in general means a food that requires time
7 and temperature control for safety (TCS) to limit pathogenic
8 microorganism growth or toxin formation. In accordance with the
9 FDA 2009 Food Code, potentially hazardous food does not include
10 a food item that because of its pH or Aw value, or interaction
11 of Aw and pH values, is designated as a non-PHF/non-TCS food in
12 Table A or B of the FDA 2009 Food Code's potentially hazardous
13 food definition.

14 (b) Notwithstanding any other provision of law and except
15 as provided in subsections (c) and (d) of this Section, neither
16 the Department of Public Health nor the Department of
17 Agriculture nor the health department of a unit of local
18 government may regulate the service of food by a cottage food
19 operation providing that all of the following conditions are
20 met:

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

24 The following provisions shall apply:

25 (A) The following jams, jellies and preserves are
26 allowed: apple, apricot, grape, peach, plum, quince,

1 orange, nectarine, tangerine, blackberry, raspberry,
2 blueberry, boysenberry, cherry, cranberry, strawberry,
3 red currants, or a combination of these fruits.
4 Rhubarb, tomato, and pepper jellies or jams are not
5 allowed. Any other jams, jellies, or preserves not
6 listed may be produced by a cottage food operation
7 provided their recipe has been tested and documented by
8 a commercial laboratory, at the expense of the cottage
9 food operation, as being not potentially hazardous,
10 containing a pH equilibrium of less than 4.6.

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

20 (C) Baked goods, such as, but not limited to,
21 bread, cookies, cakes, pies, and pastries are
22 allowed. Only high-acid fruit pies that use the
23 following fruits are allowed: apple, apricot, grape,
24 peach, plum, quince, orange, nectarine, tangerine,
25 blackberry, raspberry, blueberry, boysenberry, cherry,
26 cranberry, strawberry, red currants or a combination

1 of these fruits. Fruit pies not listed may be produced
2 by a cottage food operation provided their recipe has
3 been tested and documented by a commercial laboratory,
4 at the expense of the cottage food operation, as being
5 not potentially hazardous, containing a pH equilibrium
6 of less than 4.6. The following are potentially
7 hazardous and prohibited from production and sale by a
8 cottage food operation: pumpkin pie, sweet potato pie,
9 cheesecake, custard pies, crème pies, and pastries
10 with potentially hazardous fillings or toppings.

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

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

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

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

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

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

25 (D) the following phrase: "This product was
26 produced in a home kitchen not subject to public health

1 inspection that may also process common food
2 allergens.";

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

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

6 (5) The name and residence of the person preparing and
7 selling products as a cottage food operation is registered
8 with the health department of a unit of local government
9 where the cottage food operation resides. No fees shall be
10 charged for registration.

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

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

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

1 until it deems that the situation has been addressed to the
2 satisfaction of the Department.

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

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

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

25 Section 10. The Sanitary Food Preparation Act is amended by

1 changing Section 11 as follows:

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

3 Sec. 11. Except as hereinafter provided and as provided in
4 Section 4 of the Food Handling Regulation Enforcement Act, the
5 Department of Public Health shall enforce this Act, and for
6 that purpose it may at all times enter every such building,
7 room, basement, inclosure or premises occupied or used or
8 suspected of being occupied or used for the production,
9 preparation or manufacture for sale, or the storage, sale,
10 distribution or transportation of such food, to inspect the
11 premises and all utensils, fixtures, furniture and machinery
12 used as aforesaid; and if upon inspection any such food
13 producing or distribution establishment, conveyance, or
14 employer, employee, clerk, driver or other person is found to
15 be violating any of the provisions of this Act, or if the
16 production, preparation, manufacture, packing, storage, sale,
17 distribution or transportation of such food is being conducted
18 in a manner detrimental to the health of the employees and
19 operatives, or to the character or quality of the food therein
20 being produced, manufactured, packed, stored, sold,
21 distributed or conveyed, the officer or inspector making the
22 inspection or examination shall report such conditions and
23 violations to the Department. The Department of Agriculture
24 shall have exclusive jurisdiction for the enforcement of this
25 Act insofar as it relates to establishments defined by Section

1 2.5 of "The Meat and Poultry Inspection Act", approved July 22,
2 1959, as heretofore or hereafter amended. The Department of
3 Agriculture or Department of Public Health, as the case may be,
4 shall thereupon issue a written order to the person, firm or
5 corporation responsible for the violation or condition
6 aforesaid to abate such condition or violation or to make such
7 changes or improvements as may be necessary to abate them,
8 within such reasonable time as may be required. Notice of the
9 order may be served by delivering a copy thereof to the person,
10 firm or corporation, or by sending a copy thereof by registered
11 mail, and the receipt thereof through the post office shall be
12 prima facie evidence that notice of the order has been
13 received. Such person, firm or corporation may appear in person
14 or by attorney before the Department of Agriculture or the
15 Department of Public Health, as the case may be, within the
16 time limited in the order, and shall be given an opportunity to
17 be heard and to show why such order or instructions should not
18 be obeyed. The hearing shall be under such rules and
19 regulations as may be prescribed by the Department of
20 Agriculture or the Department of Public Health, as the case may
21 be. If after such hearing it appears that this Act has not been
22 violated, the order shall be rescinded. If it appears that this
23 Act is being violated, and that the person, firm or corporation
24 notified is responsible therefor, the previous order shall be
25 confirmed or amended, as the facts shall warrant, and shall
26 thereupon be final, but such additional time as is necessary

1 may be granted within which to comply with the final order. If
2 such person, firm or corporation is not present or represented
3 when such final order is made, notice thereof shall be given as
4 above provided. On failure of the party or parties to comply
5 with the first order of the Department of Agriculture or the
6 Department of Public Health, as the case may be, within the
7 time prescribed, when no hearing is demanded, or upon failure
8 to comply with the final order within the time specified, the
9 Department shall certify the facts to the State's Attorney of
10 the county in which such violation occurred, and such State's
11 Attorney shall proceed against the party or parties for the
12 fines and penalties provided by this Act, and also for the
13 abatement of the nuisance: Provided, that the proceedings
14 herein prescribed for the abatement of nuisances as defined in
15 this Act shall not in any manner relieve the violator from
16 prosecution in the first instance for every such violation, nor
17 from the penalties for such violation prescribed by Section 13.
18 (Source: P.A. 81-1509.)".