



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3063

by Rep. Will Guzzardi

#### SYNOPSIS AS INTRODUCED:

410 ILCS 625/3.3  
410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Makes changes to provisions concerning farmers' markets. Provides that the Department of Public Health shall work with the Farmers' Market Task Force to address farmers' market vendor complaints regarding the reasonableness of local health departments' fees and sanitation provisions. Provides that farmers' market vendors shall provide effective means to maintain potentially hazardous food at a specified temperature. Provides that handwashing stations may be shared by farmers' market vendors. Makes changes to provisions concerning cottage food operations. Changes references from "cottage food operation" to "producer". Makes changes to provisions concerning the regulation of producers. Add provisions concerning the kinds of transactions exempt from specified regulation. Removes provisions concerning potentially hazardous foods. Removes an exemption from provisions concerning the regulation of producers that applies when the gross receipts from the sale of food do not exceed \$36,000 in a calendar year. Provides that no later than December 31, 2017, the Department shall include in the Department's cottage food operation application form a statement containing specified content. Makes changes to definitions. Makes other changes.

LRB100 07812 MJP 17879 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 as follows:

6 (410 ILCS 625/3.3)

7 Sec. 3.3. Farmers' markets.

8 (a) The General Assembly finds as follows:

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

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

21 (3) Since 1999, the number of farmers' markets has  
22 tripled and new ones are being established every year.  
23 There is a lack of consistent regulation from one county to

1 the next, resulting in confusion and discrepancies between  
2 counties regarding how products may be sold.

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

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

13 (6) Recognizing that farmers' markets serve as small  
14 business incubators and that farmers' profit margins  
15 frequently are narrow-even in direct-to-consumer  
16 retail-protecting farmers from costs of regulation that  
17 are disproportionate to their profits will help ensure the  
18 continued viability of these local farms and small  
19 businesses.

20 (b) For the purposes of this Section:

21 "Department" means the Department of Public Health.

22 "Director" means the Director of Public Health.

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

1       "Potentially hazardous food" means a food that is  
2 potentially hazardous according to the Department's  
3 administrative rules. Potentially hazardous food in general  
4 means a food that requires time and temperature control for  
5 safety to limit pathogenic microorganism growth or toxin  
6 formation;

7       (c) In order to facilitate the orderly and uniform  
8 statewide implementation and affordability of the standards  
9 established in the Department's ~~Department of Public Health's~~  
10 administrative rules for this Section, the Farmers' Market Task  
11 Force shall be formed by the Director to assist the Department  
12 in implementing statewide administrative regulations for  
13 farmers' markets.

14       (d) This Section does not intend and shall not be construed  
15 to limit the power of counties, municipalities, and other local  
16 government units to regulate farmers' markets for the  
17 protection of the public health, safety, morals, and welfare,  
18 including, but not limited to, licensing requirements and time,  
19 place, and manner restrictions, except as specified in this  
20 Act. This Section provides for a statewide scheme for the  
21 orderly and consistent interpretation of the Department's  
22 ~~Department of Public Health~~ administrative rules pertaining to  
23 the safety of food and food products sold at farmers' markets.

24       (e) The Farmers' Market Task Force shall consist of at  
25 least 24 members appointed within 60 days after August 16, 2011  
26 (the effective date of this Section). Task Force members shall

1 consist of:

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

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

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

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

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

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

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

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

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

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

25 (11) a representative of an organization of public  
26 health departments that serve the City of Chicago and the

1 counties of Cook, DuPage, Kane, Kendall, Lake, McHenry,  
2 Will, and Winnebago appointed by the Director;

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

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

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

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

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

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

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

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

24 (i) The Task Force shall undertake a comprehensive and  
25 thorough review of the current Statutes and administrative  
26 rules that define which products and practices are permitted

1 and which products and practices are not permitted at farmers'  
2 markets and to assist the Department in developing statewide  
3 administrative regulations for farmers' markets.

4 (j) The Task Force shall advise the Department regarding  
5 the content of any administrative rules adopted under this  
6 Section and Sections 3.4, 3.5, and 4 of this Act prior to  
7 adoption of the rules. Any administrative rules, except  
8 emergency rules adopted pursuant to Section 5-45 of the  
9 Illinois Administrative Procedure Act, adopted under this  
10 Section without obtaining the advice of the Task Force are null  
11 and void. If the Department fails to follow the advice of the  
12 Task Force, the Department shall, prior to adopting the rules,  
13 transmit a written explanation to the Task Force. If the Task  
14 Force, having been asked for its advice, fails to advise the  
15 Department within 90 days after receiving the rules for review,  
16 the rules shall be considered to have been approved by the Task  
17 Force.

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

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

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

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

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

8           (2.5) Notwithstanding any other provision of law  
9 except as provided in this Section, local public health  
10 departments and all other units of local government are  
11 prohibited from creating sanitation guidelines, rules, or  
12 regulations for farmers' markets that are more stringent  
13 than those farmers' market sanitation regulations  
14 contained in the administrative rules adopted by the  
15 Department for the purposes of implementing this Section  
16 and Sections 3.4, 3.5, and 4 of this Act. Except as  
17 provided for in Sections 3.4 and 4 of this Act, this  
18 Section does not intend and shall not be construed to limit  
19 the power of local health departments and other government  
20 units from requiring licensing and permits for the sale of  
21 commercial food products, processed food products,  
22 prepared foods, and potentially hazardous foods at  
23 farmers' markets or conducting related inspections and  
24 enforcement activities, so long as those permits and  
25 licenses do not include unreasonable fees or sanitation  
26 provisions and rules that are more stringent than those



1 laid out in the administrative rules adopted by the  
2 Department for the purposes of implementing this Section  
3 and Sections 3.4, 3.5, and 4 of this Act.

4 (2.6) The Department shall work with the Task Force to  
5 address farmers' market vendor complaints regarding the  
6 reasonableness of local health departments' fees and  
7 sanitation provisions through such means as comparison  
8 with other local health departments and requests for  
9 written justification from any local health department  
10 indicated in a complaint. The Task Force and Department  
11 shall resolve such complaints in a manner consistent with  
12 the purposes of this Act to provide uniform statewide  
13 implementation and affordability of farmers' market rules.

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

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

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

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

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

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

25 (q) The Department and the Task Force shall work together  
26 to create a food sampling training and license program as

1 specified in Section 3.4 of this Act.

2 (r) In addition to any rules adopted pursuant to subsection  
3 (p) of this Section, the following provisions shall be applied  
4 uniformly throughout the State:

5 (1) Farmers market vendors shall provide effective  
6 means to maintain potentially hazardous food at 41 degrees  
7 Fahrenheit or below. As an alternative to mechanical  
8 refrigeration, an effectively insulated, hard-sided,  
9 cleanable container with sufficient ice or other cooling  
10 means that is intended for the storage of potentially  
11 hazardous food shall be used. Local health departments  
12 shall not limit vendors' choice of refrigeration or cooling  
13 equipment and shall not charge a fee or for use of such  
14 equipment.

15 (2) Handwashing stations may be shared by farmers'  
16 market vendors.

17 (Source: P.A. 98-660, eff. 6-23-14; 99-9, eff. 7-10-15; 99-191,  
18 eff. 1-1-16; 99-642, eff. 7-28-16.)

19 (410 ILCS 625/4)

20 Sec. 4. Direct-to-consumer food sales ~~Cottage food~~  
21 ~~operation.~~

22 (a) For the purpose of this Section:

23 "Cottage food operation" means an operation conducted by a  
24 person who produces or packages ~~non-potentially hazardous~~ food  
25 or drink in a kitchen located in that person's primary domestic

1 residence or another appropriately designed and equipped  
2 residential or commercial-style kitchen ~~on that property for~~  
3 ~~direct sale by the owner, a family member, or employee stored~~  
4 ~~in the residence or appropriately designed and equipped~~  
5 ~~residential or commercial style kitchen on that property where~~  
6 ~~the food is made.~~

7 "Delivery" means the transfer of a product resulting from a  
8 transaction between a producer and an informed end consumer.  
9 The delivery may occur by the producer's designated agent at a  
10 farm, ranch, farmers' market, home, office or any location  
11 agreed to between the producer and the informed end consumer.

12 "Department" means the Department of Public Health.

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

17 "Home consumption" means consumed within a private home or  
18 food from a private home that is only consumed by family  
19 members, employees, or nonpaying guests.

20 "Informed end consumer" means a person who is the last  
21 person to purchase any product, who does not resell the product  
22 and who has been informed that the product is not licensed,  
23 regulated or inspected.

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

1       ~~"Potentially hazardous food" means a food that is~~  
2 ~~potentially hazardous according to the Department's~~  
3 ~~administrative rules. Potentially hazardous food (PHF) in~~  
4 ~~general means a food that requires time and temperature control~~  
5 ~~for safety (TCS) to limit pathogenic microorganism growth or~~  
6 ~~toxin formation.~~

7       "Producer" means any person who harvests or produces any  
8 product which may be consumed as food or drink.

9       "Transaction" means the exchange of buying and selling.

10       (b) Notwithstanding any other provision of law and except  
11 as provided in subsections ~~(c)~~, (d), ~~and (e)~~, and (f) of this  
12 Section, neither the Department nor the Department of  
13 Agriculture nor the health department of a unit of local  
14 government may regulate the transaction ~~service~~ of food or  
15 drink by a producer ~~cottage food operation~~ providing that all  
16 of the following conditions are met:

17       (1) Transactions under this Section shall:

18               (A) be directly between the producer and the  
19 informed end consumer;

20               (B) only be for home consumption;

21               (C) occur only in Illinois;

22               (D) not involve interstate commerce;

23               (E) not involve the sale of meat products, except:

24                       (i) the sale of poultry and poultry products  
25 consistent with this Article;

26                       (ii) the sale of live animals intended for

1           slaughter;  
2                   (iii) the sale of portions of animals for  
3           future delivery provided that the processing of  
4           the animals is done by the purchaser or by an  
5           Illinois or federally licensed processing  
6           facility.

7           ~~(1) The food is a non potentially hazardous baked good,~~  
8           ~~jam, jelly, preserve, fruit butter, dry herb, dry herb~~  
9           ~~blend, dry tea blend, or similar product as adopted and~~  
10           ~~specified by Department rules pursuant to subsection (c) of~~  
11           ~~this Section, and is intended for end use only. The~~  
12           ~~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. Any~~  
18           ~~other jams, jellies, or preserves not listed may be~~  
19           ~~produced by a cottage food operation provided their~~  
20           ~~recipe has been tested and documented by a commercial~~  
21           ~~laboratory, at the expense of the cottage food~~  
22           ~~operation, as being not potentially hazardous,~~  
23           ~~containing a pH equilibrium of less than 4.6 or has~~  
24           ~~been specified and adopted as allowed in~~  
25           ~~administrative rules by the Department pursuant to~~  
26           ~~subsection (c) of this Section.~~

1           ~~(B) The following fruit butters are allowed:~~  
2           ~~apple, apricot, grape, peach, plum, quince, and prune.~~  
3           ~~Pumpkin butter, banana butter, and pear butter are not~~  
4           ~~allowed. Fruit butters not listed may be produced by a~~  
5           ~~cottage food operation provided their recipe has been~~  
6           ~~tested and documented by a commercial laboratory, at~~  
7           ~~the expense of the cottage food operation, as being not~~  
8           ~~potentially hazardous, containing a pH equilibrium of~~  
9           ~~less than 4.6 or has been specified and adopted as~~  
10           ~~allowed in administrative rules by the Department~~  
11           ~~pursuant to subsection (c) of this Section.~~

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

1           ~~following are potentially hazardous and prohibited~~  
2           ~~from production and sale by a cottage food operation:~~  
3           ~~pumpkin pie, sweet potato pie, cheesecake, custard~~  
4           ~~pies, creme pies, and pastries with potentially~~  
5           ~~hazardous fillings or toppings.~~

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

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

13           (2) ~~(4)~~ Cottage ~~The~~ food packaging conforms to the  
14           labeling requirements of the Illinois Food, Drug and  
15           Cosmetic Act and includes the following information on the  
16           label of each of its products:

17                   (A) the name and address of the producer ~~cottage~~  
18                   ~~food operation;~~

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

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

26                   (D) the following phrase: "This product was



1 produced in a home kitchen not subject to public health  
2 inspection that may also process common food  
3 allergens.";

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

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

7 (3) ~~(5)~~ The name and residence of the person preparing  
8 and selling products as a cottage food operation is  
9 registered with the health department of a unit of local  
10 government where the cottage food producer ~~operation~~  
11 resides. No fees shall be charged for registration.  
12 Registration shall be for a minimum period of one year.

13 (4) ~~(6)~~ The person preparing or packaging products as a  
14 cottage food operation has a Department approved Food  
15 Service Sanitation Management Certificate.

16 (5) The producer informs the end consumer that any food  
17 product or food sold at a farmers' market or through ranch,  
18 farm or home based sales pursuant to this section is not  
19 certified, labeled, licensed, packaged, regulated or  
20 inspected, and, if cottage foods are offered for sale, at

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

26 (c) Except for raw, unprocessed fruit and vegetables, food

1 shall not be sold or used in any commercial food establishment  
2 other than farmers' markets, unless the food has been labeled,  
3 licensed, packaged, regulated, or inspected as required by law.

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

14 (e) ~~(d)~~ Notwithstanding the provisions of subsection (b) of  
15 this Section, a State-certified local public health department  
16 may, upon providing a written statement to the Department,  
17 regulate the service of food by a cottage food operation. The  
18 regulation by a State-certified local public health department  
19 may include all of the following requirements:

20 (1) That the cottage food operation (A) register with  
21 the State-certified local public health department, which  
22 shall be for a minimum of one year and include a reasonable  
23 fee set by the State-certified local public health  
24 department that is no greater than \$25 notwithstanding  
25 paragraph (3) ~~(5)~~ of subsection (b) of this Section and (B)  
26 agree in writing at the time of registration to grant

1 access to the State-certified local public health  
2 department to conduct an inspection of the cottage food  
3 operation's primary domestic residence in the event of a  
4 consumer complaint or foodborne illness outbreak.

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

10 (f) ~~(e)~~ The Department may adopt rules as may be necessary  
11 to implement the provisions of this Section. No later than  
12 December 31, 2018, the Department shall include in the  
13 Department's cottage food operation application form a  
14 statement expressing that the cottage food producer  
15 understands that food safety is the responsibility of the  
16 cottage food operation and that such producer is strongly  
17 encouraged to seek liability insurance and additional  
18 voluntary food safety training pertaining to the food items  
19 prepared by the cottage food operation. This statement shall be  
20 followed with a signature line affirming the applicant's  
21 understanding.

22 (Source: P.A. 98-660, eff. 6-23-14; 99-191, eff. 1-1-16.)