



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1469

Introduced 2/9/2017, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

410 ILCS 625/3.3
410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. 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 or below a specified temperature. Provides that handwashing stations may be shared by farmers' market vendors. Makes additions to the list of non-potentially hazardous foods that are allowed in provisions concerning the regulation of cottage food operations. Removes an exemption from provisions concerning the regulation of cottage food operations 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 other changes. Effective immediately.

LRB100 09786 MJP 19956 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 1. This Act may be referred to as the Local Food
5 Opportunities Act.

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

8 (410 ILCS 625/3.3)

9 Sec. 3.3. Farmers' markets.

10 (a) The General Assembly finds as follows:

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

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

1 (3) Since 1999, the number of farmers' markets has
2 tripled and new ones are being established every year.
3 There is a lack of consistent regulation from one county to
4 the next, resulting in confusion and discrepancies between
5 counties regarding how products may be sold.

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

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

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

23 (b) For the purposes of this Section:

24 "Department" means the Department of Public Health.

25 "Director" means the Director of Public Health.

26 "Farmers' market" means a common facility or area where the

1 primary purpose is for farmers to gather to sell a variety of
2 fresh fruits and vegetables and other locally produced farm and
3 food products directly to consumers.

4 "Task Force" means the Farmers' Market Task Force.

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

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

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

26 (1) one person appointed by the President of the

1 Senate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 administrative regulations for farmers' markets.

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

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

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

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

25 (1) The Director, in accordance with this Section,
26 shall adopt administrative rules (as provided by the

1 Illinois Administrative Procedure Act) for foods found at
2 farmers' markets.

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

6 (2.5) Notwithstanding any other provision of law
7 except as provided in this Section, local public health
8 departments and all other units of local government are
9 prohibited from creating sanitation guidelines, rules, or
10 regulations for farmers' markets that are more stringent
11 than those farmers' market sanitation regulations
12 contained in the administrative rules adopted by the
13 Department for the purposes of implementing this Section
14 and Sections 3.4, 3.5, and 4 of this Act. Except as
15 provided for in Sections 3.4 and 4 of this Act, this
16 Section does not intend and shall not be construed to limit
17 the power of local health departments and other government
18 units from requiring licensing and permits for the sale of
19 commercial food products, processed food products,
20 prepared foods, and potentially hazardous foods at
21 farmers' markets or conducting related inspections and
22 enforcement activities, so long as those permits and
23 licenses do not include unreasonable fees or sanitation
24 provisions and rules that are more stringent than those
25 laid out in the administrative rules adopted by the
26 Department for the purposes of implementing this Section

1 and Sections 3.4, 3.5, and 4 of this Act.

2 (2.6) The Department shall work with the Task Force to
3 address farmers' market vendor complaints regarding the
4 reasonableness of local health departments' fees and
5 sanitation provisions, through such means as comparison
6 with other local health departments and requests for
7 written justification from any local health department
8 indicated in a complaint. The Task Force and Department
9 shall resolve such complaints in a manner consistent with
10 the purposes of this Act to provide uniform statewide
11 implementation and affordability of farmers' market rules.

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

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

1 or jarred items; shell eggs; meat and poultry; fish;
2 ready-to-eat foods; commercially produced prepackaged food
3 products; and any additional items specified in the
4 administrative rules adopted by the Department to
5 implement Section 3.3 of this Act.

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

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

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

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

26 (r) In addition to any rules adopted pursuant to subsection

1 (p) of this Section, the following provisions shall be applied
2 uniformly throughout the State:

3 (1) Farmers market vendors shall provide effective
4 means to maintain potentially hazardous food, as defined in
5 Section 4 of this Act, at 41 degrees Fahrenheit or below.
6 As an alternative to mechanical refrigeration, an
7 effectively insulated, hard-sided, cleanable container
8 with sufficient ice or other cooling means that is intended
9 for the storage of potentially hazardous food shall be
10 used. Local health departments shall not limit vendors'
11 choice of refrigeration or cooling equipment and shall not
12 charge a fee or for use of such equipment.

13 (2) Handwashing stations may be shared by farmers'
14 market vendors.

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

17 (410 ILCS 625/4)

18 Sec. 4. Cottage food operation.

19 (a) For the purpose of this Section:

20 "Cottage food operation" means an operation conducted by a
21 person who produces or packages non-potentially hazardous food
22 in a kitchen located in that person's primary domestic
23 residence or another appropriately designed and equipped
24 residential or commercial-style kitchen on that property for
25 direct sale by the owner, a family member, or employee stored

1 in the residence or appropriately designed and equipped
2 residential or commercial-style kitchen on that property where
3 the food is made.

4 "Department" means the Department of Public Health.

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

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

12 "Potentially hazardous food" means a food that is
13 potentially hazardous according to the Department's
14 administrative rules. Potentially hazardous food (PHF) in
15 general means a food that requires time and temperature control
16 for safety (TCS) to limit pathogenic microorganism growth or
17 toxin formation.

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

24 (1) The food is ~~a non-potentially hazardous baked good,~~
25 ~~jam, jelly, preserve, fruit butter, dry herb, dry herb~~
26 ~~blend, dry tea blend, or similar product as adopted and~~

1 ~~specified by Department rules pursuant to subsection (e) of~~
2 ~~this Section,~~ and is intended for end-use only. In addition
3 to any foods added by the Department through rules pursuant
4 to subsection (e) of this Section ~~The following provisions~~
5 ~~shall apply:~~

6 (A) The following jams, jellies and preserves are
7 allowed: apple, apricot, grape, peach, plum, quince,
8 orange, nectarine, tangerine, blackberry, raspberry,
9 blueberry, boysenberry, cherry, cranberry, strawberry,
10 red currants, or a combination of these fruits. Any
11 other jams, jellies, or preserves not listed may be
12 produced by a cottage food operation provided their
13 recipe has been tested and documented by a commercial
14 laboratory, at the expense of the cottage food
15 operation, as being not potentially hazardous,
16 containing a pH equilibrium of less than 4.6 or has
17 been specified and adopted as allowed in
18 administrative rules by the Department pursuant to
19 subsection (e) of this Section.

20 (B) The following fruit butters are allowed:
21 apple, apricot, grape, peach, plum, quince, and prune.
22 Pumpkin butter, banana butter, and pear butter are not
23 allowed. Fruit butters not listed may be produced by a
24 cottage food operation provided their recipe has been
25 tested and documented by a commercial laboratory, at
26 the expense of the cottage food operation, as being not

1 potentially hazardous, containing a pH equilibrium of
2 less than 4.6 or has been specified and adopted as
3 allowed in administrative rules by the Department
4 pursuant to subsection (e) of this Section.

5 (C) Baked goods, such as, but not limited to,
6 breads, cookies, cakes, pies, and pastries are
7 allowed. Only high-acid fruit pies that use the
8 following fruits are allowed: apple, apricot, grape,
9 peach, plum, quince, orange, nectarine, tangerine,
10 blackberry, raspberry, blueberry, boysenberry, cherry,
11 cranberry, strawberry, red currants or a combination
12 of these fruits. Fruit pies not listed may be produced
13 by a cottage food operation provided their recipe has
14 been tested and documented by a commercial laboratory,
15 at the expense of the cottage food operation, as being
16 not potentially hazardous, containing a pH equilibrium
17 of less than 4.6 or has been specified and adopted as
18 allowed in administrative rules by the Department
19 pursuant to subsection (e) of this Section. The
20 following are potentially hazardous and prohibited
21 from production and sale by a cottage food operation:
22 pumpkin pie, sweet potato pie, cheesecake, custard
23 pies, creme pies, and pastries with potentially
24 hazardous fillings or toppings.

25 (D) Acidified foods, such as pickled or fermented
26 vegetables or kombucha, provided that the recipe of the

1 acidified food has been tested and documented by a
2 commercial laboratory, at the expense of the cottage
3 food operation, as having a pH of less than 4.6, are
4 allowed.

5 (E) Condiments, such as mustard, ketchup, relish,
6 or sauces, provided that the recipe of the condiment
7 has been tested and documented by a commercial
8 laboratory, at the expense of the cottage food
9 operation, as having a pH of less than 4.6, are
10 allowed.

11 (F) Dry herbs and dry herb blends, dry tea and dry
12 tea blends, dried fruits, dried vegetables, candy,
13 confections, coffee, granola, dry cereal, nuts and nut
14 mixes, tortillas and other stove-top breads or wraps,
15 maple syrup, maple sugar, popped popcorn with or
16 without flavor added, flavored vinegar, flavored
17 honey, dried noodles, milled grain flour or meal, or
18 similar items, are allowed.

19 (2) The food is to be sold at a farmers' market, with
20 the exception that cottage foods that have a locally grown
21 agricultural product as the main ingredient may be sold on
22 the farm where the agricultural product is grown or
23 delivered directly to the consumer.

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

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

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

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

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

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

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

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

19 (5) The name and residence of the person preparing and
20 selling products as a cottage food operation is registered
21 with the health department of a unit of local government
22 where the cottage food operation resides. No fees shall be
23 charged for registration. Registration shall be for a
24 minimum period of one year.

25 (6) The person preparing or packaging products as a
26 cottage food operation has a Department approved Food

1 Service Sanitation Management Certificate.

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

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

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

23 (1) That the cottage food operation (A) register with
24 the State-certified local public health department, which
25 shall be for a minimum of one year and include a reasonable
26 fee set by the State-certified local public health

1 department that is no greater than \$25 notwithstanding
2 paragraph (5) of subsection (b) of this Section and (B)
3 agree in writing at the time of registration to grant
4 access to the State-certified local public health
5 department to conduct an inspection of the cottage food
6 operation's primary domestic residence in the event of a
7 consumer complaint or foodborne illness outbreak.

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

13 (e) The Department may adopt rules as may be necessary to
14 implement the provisions of this Section. No later than
15 December 31, 2017, the Department shall include in the
16 Department's cottage food operation application form a
17 statement expressing that the cottage food producer
18 understands that food safety is the responsibility of the
19 cottage food operation and that the producer is strongly
20 encouraged to seek liability insurance and additional
21 voluntary food safety training pertaining to the food items
22 prepared by the cottage food operation. This statement shall be
23 followed with a signature line affirming the applicant's
24 understanding.

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

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.