

SB3077



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3077

Introduced 2/5/2020, by Sen. David Koehler

SYNOPSIS AS INTRODUCED:

410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Provides that regulation by a State-certified local public health department may include a requirement that the State-certified local public health department provide a certificate of registration for approved cottage food operations, which must be displayed at all events or at the point of sale.

LRB101 18825 CPF 68282 b

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 Section 4 as follows:

6 (410 ILCS 625/4)

7 Sec. 4. Cottage food operation.

8 (a) For the purpose of this Section:

9 A food is "acidified" if: (i) acid or acid ingredients are
10 added to it to produce a final equilibrium pH of 4.6 or below;
11 or (ii) it is fermented to produce a final equilibrium pH of
12 4.6 or below.

13 "Canned food" means food preserved in air-tight,
14 vacuum-sealed containers that are heat processed sufficiently
15 to enable storing the food at normal home temperatures.

16 "Cottage food operation" means an operation conducted by a
17 person who produces or packages food or drink, other than foods
18 and drinks listed as prohibited in paragraph (1.5) of
19 subsection (b) of this Section, in a kitchen located in that
20 person's primary domestic residence or another appropriately
21 designed and equipped residential or commercial-style kitchen
22 on that property for direct sale by the owner, a family member,
23 or employee.

1 "Cut leafy greens" means fresh leafy greens whose leaves
2 have been cut, shredded, sliced, chopped, or torn. "Cut leafy
3 greens" does not mean cut-to-harvest leafy greens.

4 "Department" means the Department of Public Health.

5 "Equilibrium pH" means the final potential of hydrogen
6 measured in an acidified food after all the components of the
7 food have achieved the same acidity.

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

12 "Leafy greens" includes iceberg lettuce; romaine lettuce;
13 leaf lettuce; butter lettuce; baby leaf lettuce, such as
14 immature lettuce or leafy greens; escarole; endive; spring mix;
15 spinach; cabbage; kale; arugula; and chard. "Leafy greens" does
16 not include microgreens or herbs such as cilantro or parsley.

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

20 "Microgreen" means an edible plant seedling grown in soil
21 or substrate and harvested above the soil or substrate line.

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

1 toxin formation.

2 "Sprout" means any seedling intended for human consumption
3 that was produced in a manner that does not meet the definition
4 of microgreen.

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

12 (1) (Blank).

13 (1.5) A cottage food operation may produce homemade
14 food and drink. However, a cottage food operation, unless
15 properly licensed, certified, and compliant with all
16 requirements to sell a listed food item under the laws and
17 regulations pertinent to that food item, shall not sell or
18 offer to sell the following food items or processed foods
19 containing the following food items, except as indicated:

20 (A) meat, poultry, fish, seafood, or shellfish;

21 (B) dairy, except as an ingredient in a
22 non-potentially hazardous baked good or candy, such as
23 caramel, subject to paragraph (1.8);

24 (C) eggs, except as an ingredient in a
25 non-potentially hazardous baked good or in dry
26 noodles;

1 (D) pumpkin pies, sweet potato pies, cheesecakes,
2 custard pies, creme pies, and pastries with
3 potentially hazardous fillings or toppings;

4 (E) garlic in oil or oil infused with garlic,
5 except if the garlic oil is acidified;

6 (F) canned foods, except for the following, which
7 may be canned only in Mason-style jars with new lids:

8 (i) fruit jams, fruit jellies, fruit
9 preserves, or fruit butters;

10 (ii) syrups;

11 (iii) whole or cut fruit canned in syrup;

12 (iv) acidified fruit or vegetables prepared
13 and offered for sale in compliance with paragraph
14 (1.6); and

15 (v) condiments such as prepared mustard,
16 horseradish, or ketchup that do not contain
17 ingredients prohibited under this Section and that
18 are prepared and offered for sale in compliance
19 with paragraph (1.6);

20 (G) sprouts;

21 (H) cut leafy greens, except for cut leafy greens
22 that are dehydrated, acidified, or blanched and
23 frozen;

24 (I) cut or pureed fresh tomato or melon;

25 (J) dehydrated tomato or melon;

26 (K) frozen cut melon;

- 1 (L) wild-harvested, non-cultivated mushrooms;
2 (M) alcoholic beverages; or
3 (N) kombucha.

4 (1.6) In order to sell canned tomatoes or a canned
5 product containing tomatoes, a cottage food operator shall
6 either:

7 (A) follow exactly a recipe that has been tested by
8 the United States Department of Agriculture or by a
9 state cooperative extension located in this State or
10 any other state in the United States; or

11 (B) submit the recipe, at the cottage food
12 operator's expense, to a commercial laboratory to test
13 that the product has been adequately acidified; use
14 only the varietal or proportionate varietals of tomato
15 included in the tested recipe for all subsequent
16 batches of such recipe; and provide documentation of
17 the test results of the recipe submitted under this
18 subparagraph to an inspector upon request during any
19 inspection authorized by paragraph (2) of subsection
20 (d).

21 (1.7) A State-certified local public health department
22 that regulates the service of food by a cottage food
23 operation in accordance with subsection (d) of this Section
24 may require a cottage food operation to submit a canned
25 food that is subject to paragraph (1.6), at the cottage
26 food operator's expense, to a commercial laboratory to

1 verify that the product has a final equilibrium pH of 4.6
2 or below.

3 (1.8) A State-certified local public health department
4 that regulates the service of food by a cottage food
5 operation in accordance with subsection (d) of this Section
6 may require a cottage food operation to submit a recipe for
7 any baked good containing cheese, at the cottage food
8 operator's expense, to a commercial laboratory to verify
9 that it is non-potentially hazardous before allowing the
10 cottage food operation to sell the baked good as a cottage
11 food.

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

17 (3) (Blank).

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

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

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

25 (C) all ingredients of the food product, including
26 any colors, artificial flavors, and preservatives,

1 listed in descending order by predominance of weight
2 shown with common or usual names;

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

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

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

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

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

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

24 (c) Notwithstanding the provisions of subsection (b) of
25 this Section, if the Department or the health department of a
26 unit of local government has received a consumer complaint or

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

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

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

25 (2) That in the event of a consumer complaint or
26 foodborne illness outbreak the State-certified local

1 public health department is allowed to (A) inspect the
2 premises of the cottage food operation in question and (B)
3 set a reasonable fee for that inspection.

4 (3) That the State-certified local public health
5 department must provide a certificate of registration for
6 approved cottage food operations, which must be displayed
7 at all events or at the point of sale.

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

10 (Source: P.A. 100-35, eff. 1-1-18; 100-1069, eff. 8-24-18;
11 101-81, eff. 7-12-19.)