



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4851

Introduced 1/27/2022, by Rep. Will Guzzardi

SYNOPSIS AS INTRODUCED:

410 ILCS 625/3.6

Amends the Food Handling Regulation Enforcement Act. Replaces provisions concerning home kitchen operations with provisions that: provide that a home kitchen operation may produce homemade food and drink if specified conditions are met; require a home kitchen operation's food packaging to conform with the labeling requirements of the Illinois Food, Drug and Cosmetic Act; contain prepackaging and labeling requirements for home kitchen operation products; provide that a home kitchen operation's annual revenues may not exceed \$250,000; require the Department of Public Health to adopt rules establishing reasonable food safety standards for home kitchen operations and to issue administrative guidance for use by local health departments; and provide that a person who produces or packages a non-potentially hazardous baked good for sale by a religious, charitable, or nonprofit organization for fundraising purposes is exempt from the requirements of the provisions. Preempts home rule.

LRB102 24740 CPF 33980 b

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 3.6 as follows:

6 (410 ILCS 625/3.6)

7 Sec. 3.6. Home kitchen operation.

8 (a) In this Section:

9 "Department" means the Department of Public Health.

10 "Home kitchen operation" means an enterprise that:

11 (1) is conducted in a residence;

12 (2) is controlled and operated by an individual living
13 at the residence; and

14 (3) either (A) stores, handles, prepares, and packages
15 food for sale to consumers or (B) stores, handles,
16 prepares, packages, and serves food for sale to consumers.

17 "Local health department" means a State-certified health
18 department of a unit of local government.

19 "Ready-to-eat food" means food that is in a form that is
20 edible and safe to eat without washing, cooking, or additional
21 preparation by the consumer and that is reasonably expected to
22 be consumed in the form in which it is provided to the consumer
23 or after reheating by the consumer.

1 (b) A home kitchen operation may produce homemade food and
2 drink provided that all of the following conditions are met:

3 (1) A home kitchen operation must register with or be
4 permitted by the local health department for the unit of
5 local government in which it is located, but may sell
6 products outside of the unit of local government where the
7 home kitchen operation is located. A copy of the
8 certificate of registration or permit must be available
9 upon request by any local health department.

10 (2) A home kitchen operation shall not sell or offer
11 to sell the following food items or processed foods
12 containing the following food items:

13 (A) Alcoholic beverages.

14 (B) Milk or milk products.

15 (C) Raw shellfish.

16 (D) Any low-acid canned food or acidified food
17 that requires a scheduled process under applicable
18 federal, State, or local law, unless the home kitchen
19 operation is otherwise authorized to act as a cottage
20 food operation.

21 (E) Any food that would require a variance, if the
22 home kitchen operation is subject to 77 Ill. Adm. Code
23 750.

24 (3) A home kitchen operation may sell only
25 ready-to-eat food.

26 (4) A home kitchen operation must be supervised by a

1 Department-approved certified food protection manager.

2 (c) A home kitchen operation's food packaging must conform
3 with the labeling requirements of the Illinois Food, Drug and
4 Cosmetic Act. A home kitchen operation's product shall be
5 prepackaged and the food packaging shall be affixed with a
6 prominent label that includes the following:

7 (1) The name of the home kitchen operation and unit of
8 local government in which the home kitchen operation is
9 located.

10 (2) The identifying registration number provided by
11 the local health department on the certificate of
12 registration or permit and the name of the municipality or
13 county in which the registration was filed or the permit
14 was issued.

15 (3) The common or usual name of the food product.

16 (4) All ingredients of the food product, including any
17 color, artificial flavor, and preservative, listed in
18 descending order by predominance of weight shown with the
19 common or usual names.

20 (5) The following phrase in prominent lettering: "This
21 product was produced in a home kitchen not regularly
22 inspected by a health department that may also process
23 common food allergens. If you have safety concerns,
24 contact your local health department."

25 (6) The date the product was processed.

26 (7) Allergen labeling as specified under federal and

1 State labeling requirements.

2 Food packaging may include the designation
3 "Illinois-grown", "Illinois-sourced", or "Illinois farm
4 product" if the packaged product is a local farm or food
5 product, as that term is defined in Section 5 of the Local
6 Food, Farms, and Jobs Act.

7 If a product is difficult to properly label or package, or
8 for other reasons, the local health department of the location
9 where the product is sold may grant permission to sell the
10 product without it being prepackaged, in which case other
11 prominent written notice shall be provided to the purchaser.

12 At the point of sale, notice must be provided in a
13 prominent location that states the following: "This product
14 was produced in a home kitchen not inspected by a health
15 department that may also process common food allergens.". At a
16 physical display, notice shall be a placard. Online, notice
17 shall be a message on the home kitchen operation's online
18 sales interface at the point of sale.

19 (d) Food and drink produced by a home kitchen operation
20 shall be sold directly to consumers for their own consumption
21 and not for resale. Sales directly to consumers include, but
22 are not limited to, sales at or through the following:

23 (1) Farmers' markets.

24 (2) Fairs, festivals, public events, or online.

25 (3) Pickup from the private home or farm of the home
26 kitchen operator, if the pickup is not prohibited by any

1 law of the unit of local government that applies equally
2 to all home kitchen operations. In a municipality with a
3 population of 1,000,000 or more, a home kitchen operator
4 shall comply with any law of the municipality that applies
5 equally to all home-based businesses.

6 (4) Delivery to the customer by the home kitchen
7 operation or a third-party delivery service.

8 (5) Pickup from a third-party private property with
9 the consent of the third-party property holder.

10 (e) A home kitchen operation's annual revenues may not
11 exceed \$250,000.

12 (f) The Department shall exclude home kitchen operations
13 from the definition of "Food Establishment" under 77 Ill. Adm.
14 Code 750.100 and the rules applicable to Food Establishments.

15 (g) By July 1, 2023, the Department shall adopt rules
16 establishing reasonable food safety standards for home kitchen
17 operations. The rules must comply with the following:

18 (1) Be reasonably necessary to ensure food safety and
19 reasonably feasible for ordinary home kitchen facilities.

20 (2) Not require home kitchen operations to have or to
21 use facilities or equipment not ordinarily used in private
22 homes.

23 (3) Not prevent or restrict persons who live in the
24 home and their guests from accessing and being present in
25 the registered or permitted area while food for the home
26 kitchen operation is being stored, handled, prepared, or

1 packaged, so long as such persons are supervised by the
2 licensed operator and not known to have symptoms of acute
3 gastrointestinal illness or to be infected with a disease
4 that is transmissible through food.

5 If food safety training is required, the Department shall
6 ensure that the training content and any required examination
7 are available in languages other than English that are
8 commonly spoken by Illinois residents as their primary
9 language.

10 (h) By July 1, 2023, the Department shall issue
11 administrative guidance establishing the following for use by
12 local health departments:

13 (1) A standard registration or permit application
14 form, including, if applicable, a written food safety
15 plan.

16 (2) A standard compliance self-certification checklist
17 form.

18 (3) A standard inspection form and inspection
19 procedures.

20 (i) A local health department shall register or grant a
21 permit to any eligible home kitchen operation that meets the
22 requirements of this Section and shall issue a registration
23 certificate or permit certificate with an identifying number
24 to each registered or permitted home kitchen operation. A
25 local health department may conduct a pre-operational
26 inspection of the applicant and may establish a

1 self-certification program for home kitchen operators to
2 affirm compliance with applicable laws, rules, and
3 regulations.

4 The registration or permit shall be renewed annually and
5 the local health department may impose a fee not to exceed
6 \$650.

7 (j) Notwithstanding any other provision of law, an
8 inspection of a home kitchen operation shall be limited to a
9 pre-operational inspection before registration or issuing a
10 permit, investigation of credible complaints, and
11 investigation of foodborne illness outbreaks.

12 An inspection shall be scheduled with the home kitchen
13 operation in advance, except in an emergency situation.

14 An inspection shall be limited to the areas of the
15 residence used for home kitchen operations.

16 (k) If there is a credible consumer complaint or foodborne
17 illness outbreak, upon notice from a different local health
18 department or if the Department or a local health department
19 has reason to believe that an imminent health hazard exists or
20 that a home kitchen operation's product has been found to be
21 misbranded, adulterated, or not in compliance with the
22 conditions for home kitchen operations set forth in this
23 Section or Department rules, the Department or the local
24 health department may:

25 (1) inspect the premises of the home kitchen operation
26 in question;

1 (2) set a reasonable fee for the inspection; and
2 (3) invoke penalties and the cessation of the sale of
3 the home kitchen operation's products until it deems that
4 the situation has been addressed to the satisfaction of
5 the Department or local health department; if the
6 situation is not amenable to being addressed, the local
7 health department may revoke the home kitchen operation's
8 registration or permit following a process outlined by the
9 local health department.

10 A local health department that receives a consumer
11 complaint or a report of foodborne illness related to a home
12 kitchen operation in another jurisdiction shall refer the
13 complaint or report to the local health department where the
14 home kitchen operation is located.

15 (l) A person who produces or packages a non-potentially
16 hazardous baked good for sale by a religious, charitable, or
17 nonprofit organization for fundraising purposes is exempt from
18 the requirements of this Section.

19 (m) A unit of local government shall allow home kitchen
20 operations to use residential property as registered or
21 permitted.

22 (n) A unit of local government shall allow commercial
23 delivery services to pick up food from home kitchen
24 operations.

25 (o) A home rule unit may not regulate home kitchen
26 operations in a manner inconsistent with the regulation by the

1 State of home kitchen operations under this Section or rules
2 adopted under this Section. This Section is a limitation under
3 subsection (i) of Section 6 of Article VII of the Illinois
4 Constitution on the concurrent exercise by home rule units of
5 powers and functions exercised by the State.

6 ~~(a) For the purpose of this Section, "home kitchen~~
7 ~~operation" means a person who produces or packages~~
8 ~~non-potentially hazardous baked goods, as allowed by~~
9 ~~subsection (a 5), in a kitchen of that person's primary~~
10 ~~domestic residence for direct sale by the owner or a family~~
11 ~~member. A home kitchen operation does not include a person who~~
12 ~~produces or packages non-potentially hazardous baked goods for~~
13 ~~sale by a religious, charitable, or nonprofit organization for~~
14 ~~fundraising purposes; the production or packaging of~~
15 ~~non-potentially hazardous baked goods for these purposes is~~
16 ~~exempt from the requirements of this Act. The following~~
17 ~~conditions must be met in order to qualify as a home kitchen~~
18 ~~operation:~~

19 ~~(1) Monthly gross sales do not exceed \$1,000.~~

20 ~~(2) The food is a non-potentially hazardous baked~~
21 ~~good, as described in Section 4 of this Act.~~

22 ~~(3) A notice is provided to the purchaser that the~~
23 ~~product was produced in a home kitchen.~~

24 ~~(4) The food package is affixed with a label or other~~
25 ~~written notice is provided to the purchaser that includes:~~

26 ~~(i) the common or usual name of the food product;~~

1 and

2 ~~(ii) allergen labeling as specified in federal~~
3 ~~labeling requirements by the United States Food and~~
4 ~~Drug Administration.~~

5 ~~(5) The food is sold directly to the consumer.~~

6 ~~(6) The food is stored in the residence where it is~~
7 ~~produced or packaged.~~

8 ~~(a 5) Baked goods, such as, but not limited to, breads,~~
9 ~~cookies, cakes, pies, and pastries are allowed. Only high acid~~
10 ~~fruit pies that use the following fruits are allowed: apple,~~
11 ~~apricot, grape, peach, plum, quince, orange, nectarine,~~
12 ~~tangerine, blackberry, raspberry, blueberry, boysenberry,~~
13 ~~cherry, cranberry, strawberry, red currants, or a combination~~
14 ~~of these fruits.~~

15 ~~(b) The Department of Public Health or the health~~
16 ~~department of a unit of local government may inspect a home~~
17 ~~kitchen operation in the event of a complaint or disease~~
18 ~~outbreak.~~

19 ~~(c) The requirements of this Section apply only to a home~~
20 ~~kitchen operation located in a municipality, township, or~~
21 ~~county where the local governing body having the jurisdiction~~
22 ~~to enforce this Act or the rules adopted under this Act has~~
23 ~~adopted an ordinance authorizing home kitchen operations.~~

24 (Source: P.A. 99-78, eff. 7-20-15; 99-191, eff. 1-1-16;
25 100-35, eff. 1-1-18.)