

# SB3838



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB3838

Introduced 1/21/2022, by Sen. David Koehler

#### SYNOPSIS AS INTRODUCED:

410 ILCS 625/3.3

Amends the Food Handling Regulation Enforcement Act. Provides that a farmer who sells meat, poultry, eggs, or dairy products from the premises of the farmer's farm is exempt from licensing by the farmer's local health department under specified conditions. Provides that local health departments may issue Farmers' Market Retail Permits for the sale of products at farmers' markets and at semi-permanent events not to exceed 100 days of operation in a calendar year. Provides that a Farmers' Market Retail Permit shall be valid for one year and that the fee for obtaining a Farmers' Market Retail Permit shall not exceed \$150. Removes provisions regarding administrative rules, produce, and food products for farmers' markets. Contains other provisions. Effective January 1, 2023.

LRB102 24488 CPF 33722 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 3.3 as follows:

6 (410 ILCS 625/3.3)

7 Sec. 3.3. Farms and farmers' ~~Farmers'~~ markets; Farmers'  
8 Market Retail Permit.

9 (a) The General Assembly finds as follows:

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

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

23 (3) Since 1999, the number of farmers' markets has

1           tripled and new ones are being established every year.  
2           There is a lack of consistent regulation from one county  
3           to the next, resulting in confusion and discrepancies  
4           between counties regarding how products may be sold. There  
5           continue to be inconsistencies, confusion, and lack of  
6           awareness by consumers, farmers, markets, and local health  
7           authorities of required guidelines affecting on-farm sales  
8           and farmers' markets from county to county.

9           (4) (Blank).

10          (5) (Blank).

11          (6) Recognizing that farms and farmers' markets serve  
12          as small business incubators, that direct-to-consumer  
13          sales on-farm or via delivery are an important part of  
14          small farm livelihood, and that farmers' profit margins  
15          frequently are narrow, even in direct-to-consumer retail,  
16          protecting farmers from costs of regulation that are  
17          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          "Farmer" means an individual who is a resident of Illinois  
24          and owns or leases land in Illinois that is used as a farm, as  
25          that term is defined in Section 1-60 of the Property Tax Code,  
26          or that individual's employee.

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

5 "Local health department" means a State-certified health  
6 department of a unit of local government.

7 (c) (Blank).

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

18 (e) (Blank).

19 (f) (Blank).

20 (g) (Blank).

21 (h) (Blank).

22 (i) (Blank).

23 (j) (Blank).

24 (k) (Blank).

25 (l) (Blank).

26 (m) The following provisions shall apply concerning

1 statewide retail sale of farm products at farms, farm stands,  
2 farmers' markets, and other direct-to-consumer venues ~~farmers'~~  
3 ~~market food safety guidelines:~~

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

8 (2) The rules and regulations described in this  
9 Section shall be consistently enforced by local health  
10 authorities throughout the State.

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

1 ~~enforcement activities, so long as those permits and~~  
2 ~~licenses do not include unreasonable fees or sanitation~~  
3 ~~provisions and rules that are more stringent than those~~  
4 ~~laid out in the administrative rules adopted by the~~  
5 ~~Department for the purposes of implementing this Section~~  
6 ~~and Sections 3.4, 3.5, and 4 of this Act.~~

7 (2.10) A farmer who sells meat, poultry, eggs, or  
8 dairy products produced on the premises of the farmer's  
9 farm is exempt from licensing by the farmer's local health  
10 department under the following conditions:

11 (A) The animal from which the product came was  
12 raised for a minimum of 30 days on the premises of the  
13 farmer's farm.

14 (B) The product is not processed, except by a  
15 licensed facility.

16 (C) If selling meat, the farmer has a meat broker  
17 or meat and poultry broker license issued by the  
18 Department of Agriculture.

19 (D) If selling poultry processed at a licensed  
20 facility, the farmer has a poultry broker or meat and  
21 poultry broker license issued by the Department of  
22 Agriculture, unless the farmer is exempt from  
23 licensure under paragraph (B) of Section 5 of the Meat  
24 and Poultry Inspection Act.

25 (E) If selling dairy, the farmer has dairy and  
26 dairy processing permits issued by the Department.

1           (F) If selling candled eggs, the farmer has an  
2           Illinois Egg License issued by the Department of  
3           Agriculture.

4           (2.15) A farmer who engages in the off-farm retail  
5           sale of meat, poultry, eggs, or dairy products that come  
6           from an animal raised for a minimum of 30 days on the  
7           farmer's farm may be required to obtain a Farmers' Market  
8           Retail Permit from each unit of local government in which  
9           a sale of one of those products take place. As part of the  
10           permitting process, a local health department may require  
11           the farmer to perform the following:

12           (A) Provide a thermometer for each refrigeration  
13           unit, including, but not limited to, a refrigerator,  
14           fridge, freezer, or cooler, that is accurate to plus  
15           or minus 3 degrees Fahrenheit.

16           (B) Maintain in good condition all equipment,  
17           utensils, and the like, meaning that there are no  
18           chips, pitting, or other similar wear.

19           (C) Provide effective means to maintain cold food  
20           temperatures below 41 degrees Fahrenheit and frozen  
21           foods below 32 degrees Fahrenheit at all times during  
22           the storage and transport of food. A local health  
23           department shall not limit a vendor's choice of  
24           refrigeration or cooling equipment. As an alternative  
25           to mechanical refrigeration, an effectively insulated,  
26           hard-sided, and cleanable container with sufficient

1 ice or other cooling means that is intended for the  
2 storage of potentially hazardous food shall be used.

3 (D) For meat, dairy, or poultry products that do  
4 not require refrigeration, provide a product hazard  
5 analysis and critical control point (HACCP) or food  
6 safety plan from a licensed facility as evidence of  
7 product safety at specific temperatures for the  
8 specified duration that they are not refrigerated.

9 (E) If selling meat, dairy, or poultry, provide  
10 the name and contact information of the licensed  
11 facility in which the product was processed.

12 (F) Meat, poultry, and dairy products may not be  
13 further processed beyond the state received from the  
14 licensed facility.

15 (G) If selling eggs, provide an Illinois Egg  
16 License issued by the Department of Agriculture.

17 (H) If selling meat or poultry, provide a meat  
18 broker, poultry broker, or meat and poultry broker  
19 license issued by the Department of Agriculture.

20 (I) If selling dairy, provide a dairy license  
21 issued by the Department of Public Health.

22 (2.20) Retail sales regulated under a Farmers' Market  
23 Retail Permit issued under paragraph (2.15) include sales  
24 at farmers' markets and sales at semi-permanent events not  
25 to exceed 100 days of operation in a calendar year.

26 (2.25) A Farmers' Market Retail Permit shall be valid



1 for one year. The fee for obtaining a Farmers' Market  
2 Retail Permit shall not exceed \$150. A local health  
3 department may inspect the farmer while he or she is  
4 vending at a farmers' market or semi-permanent event to  
5 ensure compliance with this Section. A local health  
6 department may elect not to require a Farmers' Market  
7 Retail Permit.

8 (3) In the case of alleged noncompliance with the  
9 provisions described in this Section, local health  
10 departments shall issue written notices to vendors and  
11 market managers of any noncompliance issues.

12 (4) (Blank). Produce and food products coming within  
13 the scope of the provisions of this Section shall include,  
14 but not be limited to, raw agricultural products,  
15 including fresh fruits and vegetables; popcorn, grains,  
16 seeds, beans, and nuts that are whole, unprocessed,  
17 unpackaged, and unsprouted; fresh herb sprigs and dried  
18 herbs in bunches; baked goods sold at farmers' markets;  
19 cut fruits and vegetables; milk and cheese products; ice  
20 cream; syrups; wild and cultivated mushrooms; apple cider  
21 and other fruit and vegetable juices; herb vinegar;  
22 garlic in oil; flavored oils; pickles, relishes, salsas,  
23 and other canned or jarred items; shell eggs; meat and  
24 poultry; fish; ready to eat foods; commercially produced  
25 prepackaged food products; and any additional items  
26 specified in the administrative rules adopted by the

1 ~~Department to implement Section 3.3 of this Act.~~

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

7 (o) (Blank).

8 (p) (Blank). ~~The Department of Public Health and the  
9 Department of Agriculture shall adopt administrative rules  
10 necessary to implement, interpret, and make specific the  
11 provisions of this Section, including, but not limited to,  
12 rules concerning labels, sanitation, and food product safety  
13 according to the realms of their jurisdiction.~~

14 (q) The Department shall create a food sampling training  
15 and license program as specified in Section 3.4 of this Act.

16 (r) In addition to any rules adopted pursuant to  
17 subsection (p) of this Section, the following provisions shall  
18 be applied uniformly throughout the State, including to home  
19 rule units, except as otherwise provided in this Act:

20 (1) Farmers market vendors shall provide effective  
21 means to maintain potentially hazardous food, as defined  
22 in Section 4 of this Act, at 41 degrees Fahrenheit or  
23 below. As an alternative to mechanical refrigeration, an  
24 effectively insulated, hard-sided, cleanable container  
25 with sufficient ice or other cooling means that is  
26 intended for the storage of potentially hazardous food

1 shall be used. Local health departments shall not limit  
2 vendors' choice of refrigeration or cooling equipment and  
3 shall not charge a fee for use of such equipment. Local  
4 health departments shall not be precluded from requiring  
5 an effective alternative form of cooling if a vendor is  
6 unable to maintain food at the appropriate temperature.

7 (2) Handwashing stations may be shared by farmers'  
8 market vendors if handwashing stations are accessible to  
9 vendors.

10 (Source: P.A. 100-488, eff. 6-1-18; 100-805, eff. 1-1-19;  
11 101-81, eff. 7-12-19.)

12 Section 99. Effective date. This Act takes effect January  
13 1, 2023.