



Sen. David Koehler

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1 AMENDMENT TO SENATE BILL 840

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 840 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Food Handling Regulation Enforcement Act is  
5 amended by adding Section 4 as follows:

6 (410 ILCS 625/4 new)

7 Sec. 4. Cottage food operation.

8 (a) For the purpose of this Section:

9 "Cottage food operation" means a person who produces or  
10 packages non-potentially hazardous food in a kitchen of that  
11 person's primary domestic residence for direct sale by the  
12 owner or a family member, stored in the residence where the  
13 food is made.

14 "Potentially hazardous food" means a food that is  
15 potentially hazardous according to the Federal Food and Drug  
16 Administration 2009 Food Code (FDA 2009 Food Code) or any

1 subsequent amendments to the FDA 2009 Food Code. Potentially  
2 hazardous food (PHF) in general means a food that requires time  
3 and temperature control for safety (TCS) to limit pathogenic  
4 microorganism growth or toxin formation. In accordance with the  
5 FDA 2009 Food Code, potentially hazardous food does not include  
6 a food item that because of its pH or Aw value, or interaction  
7 of Aw and pH values, is designated as a non-PHF/non-TCS food in  
8 Table A or B of the FDA 2009 Food Code's potentially hazardous  
9 food definition.

10 (b) Notwithstanding any other provision of law and except  
11 as provided in subsection (c) of this Section, neither the  
12 Department of Public Health nor the Department of Agriculture  
13 nor the health department of a unit of local government may  
14 regulate the service of food by a cottage food operation  
15 providing that all of the following conditions are met:

16 (1) The food is a not a potentially hazardous baked  
17 good, jam, jelly, preserve, fruit butter, dry herb, dry  
18 herb blend, or dry tea blend and is intended for end-use  
19 only. The following provisions shall apply:

20 (A) The following jams, jellies and preserves are  
21 allowed: apple, apricot, grape, peach, plum, quince,  
22 orange, nectarine, tangerine, blackberry, raspberry,  
23 blueberry, boysenberry, cherry, cranberry, strawberry,  
24 red currants, or a combination of these fruits.  
25 Rhubarb, tomato, and pepper jellies or jams are not  
26 allowed. Any other jams, jellies, or preserves not

1 listed may be produced by a cottage food operation  
2 provided their recipe has been tested and documented by  
3 a commercial laboratory, at the expense of the cottage  
4 food operation, as being not potentially hazardous,  
5 containing a pH equilibrium of less than 4.6.

6 (B) The following fruit butters are allowed:  
7 apple, apricot, grape, peach, plum, quince, and prune.  
8 Pumpkin butter, banana butter, and pear butter are not  
9 allowed. Fruit butters not listed may be produced by a  
10 cottage food operation provided their recipe has been  
11 tested and documented by a commercial laboratory, at  
12 the expense of the cottage food operation, as being not  
13 potentially hazardous, containing a pH equilibrium of  
14 less than 4.6.

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

1           of less than 4.6. The following are potentially  
2           hazardous and prohibited from production and sale by a  
3           cottage food operation: pumpkin pie, sweet potato pie,  
4           cheesecake, custard pies, crème pies, and pastries  
5           with potentially hazardous fillings or toppings.

6           (2) The food is to be sold at a farmers' market.

7           (3) Gross receipts from the sale of food exempted under  
8           this Section do not exceed \$25,000 in a calendar year.

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

13               (A) the name and address of the cottage food  
14               operation;

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

16               (C) all ingredients of the food product, including  
17               any colors, artificial flavors, and preservatives,  
18               listed in descending order by predominance of weight  
19               shown with common or usual names;

20               (D) the following phrase: "This product was  
21               produced in a home kitchen not subject to public health  
22               inspection that may also process common food  
23               allergens;

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

25               (F) allergen labeling as specified in federal  
26               labeling requirements.

1           (5) The name and residence of the person preparing and  
2           selling products as a cottage food operation is registered  
3           with the health department of a unit of local government  
4           where the cottage food operation resides. No fees shall be  
5           charged for registration.

6           (6) The person preparing and selling products as a  
7           cottage food operation has a Department of Public Health  
8           approved Food Service Sanitation Management Certificate.

9           (7) At the point of sale a placard is displayed in a  
10          prominent location that states the following: "This  
11          product was produced in a home kitchen not subject to  
12          public health inspection that may also process common food  
13          allergens."

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

24           Section 10. The Sanitary Food Preparation Act is amended by  
25           changing Section 11 as follows:

1 (410 ILCS 650/11) (from Ch. 56 1/2, par. 77)

2 Sec. 11. Except as hereinafter provided and as provided in  
3 Section 4 of the Food Handling Regulation Enforcement Act, the  
4 Department of Public Health shall enforce this Act, and for  
5 that purpose it may at all times enter every such building,  
6 room, basement, inclosure or premises occupied or used or  
7 suspected of being occupied or used for the production,  
8 preparation or manufacture for sale, or the storage, sale,  
9 distribution or transportation of such food, to inspect the  
10 premises and all utensils, fixtures, furniture and machinery  
11 used as aforesaid; and if upon inspection any such food  
12 producing or distribution establishment, conveyance, or  
13 employer, employee, clerk, driver or other person is found to  
14 be violating any of the provisions of this Act, or if the  
15 production, preparation, manufacture, packing, storage, sale,  
16 distribution or transportation of such food is being conducted  
17 in a manner detrimental to the health of the employees and  
18 operatives, or to the character or quality of the food therein  
19 being produced, manufactured, packed, stored, sold,  
20 distributed or conveyed, the officer or inspector making the  
21 inspection or examination shall report such conditions and  
22 violations to the Department. The Department of Agriculture  
23 shall have exclusive jurisdiction for the enforcement of this  
24 Act insofar as it relates to establishments defined by Section  
25 2.5 of "The Meat and Poultry Inspection Act", approved July 22,

1 1959, as heretofore or hereafter amended. The Department of  
2 Agriculture or Department of Public Health, as the case may be,  
3 shall thereupon issue a written order to the person, firm or  
4 corporation responsible for the violation or condition  
5 aforesaid to abate such condition or violation or to make such  
6 changes or improvements as may be necessary to abate them,  
7 within such reasonable time as may be required. Notice of the  
8 order may be served by delivering a copy thereof to the person,  
9 firm or corporation, or by sending a copy thereof by registered  
10 mail, and the receipt thereof through the post office shall be  
11 prima facie evidence that notice of the order has been  
12 received. Such person, firm or corporation may appear in person  
13 or by attorney before the Department of Agriculture or the  
14 Department of Public Health, as the case may be, within the  
15 time limited in the order, and shall be given an opportunity to  
16 be heard and to show why such order or instructions should not  
17 be obeyed. The hearing shall be under such rules and  
18 regulations as may be prescribed by the Department of  
19 Agriculture or the Department of Public Health, as the case may  
20 be. If after such hearing it appears that this Act has not been  
21 violated, the order shall be rescinded. If it appears that this  
22 Act is being violated, and that the person, firm or corporation  
23 notified is responsible therefor, the previous order shall be  
24 confirmed or amended, as the facts shall warrant, and shall  
25 thereupon be final, but such additional time as is necessary  
26 may be granted within which to comply with the final order. If

1 such person, firm or corporation is not present or represented  
2 when such final order is made, notice thereof shall be given as  
3 above provided. On failure of the party or parties to comply  
4 with the first order of the Department of Agriculture or the  
5 Department of Public Health, as the case may be, within the  
6 time prescribed, when no hearing is demanded, or upon failure  
7 to comply with the final order within the time specified, the  
8 Department shall certify the facts to the State's Attorney of  
9 the county in which such violation occurred, and such State's  
10 Attorney shall proceed against the party or parties for the  
11 fines and penalties provided by this Act, and also for the  
12 abatement of the nuisance: Provided, that the proceedings  
13 herein prescribed for the abatement of nuisances as defined in  
14 this Act shall not in any manner relieve the violator from  
15 prosecution in the first instance for every such violation, nor  
16 from the penalties for such violation prescribed by Section 13.  
17 (Source: P.A. 81-1509.)".