Introduced 2/19/2021, by Rep. Will Guzzardi

SYNOPSIS AS INTRODUCED:

410 ILCS 625/4
410 ILCS 625/3.6 rep.

Amends the Food Handling Regulation Enforcement Act. In provisions regarding cottage food operations: makes changes to definitions; requires cottage food operations to comply with specified requirements (rather than providing that specified entities may regulate the transaction of food or drink by a cottage food operation if the requirements are met); adds requirements for the sale of low-acid canned foods and fermented or acidified foods; provides that food and drink produced by a cottage food operation shall be sold directly to consumers for their own consumption and not for resale; removes language requiring State-certified local public health departments to regulate the service of food by a cottage food operation and allowing them to require a cottage food operation to submit specified canned foods to a commercial laboratory to verify specified information; requires local health departments to register eligible cottage food operations and issue certificates of registration; adds an exemption for a person who produces or packages a non-potentially hazardous baked good for sale by a religious, charitable, or nonprofit organization for fundraising purposes; preempts home rule; and makes other changes. Repeals provisions regarding home kitchen operations.
AN ACT concerning health.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

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

(410 ILCS 625/4)
Sec. 4. Cottage food operation.
(a) For the purpose of this Section:
A food is "acidified" if: (i) acid or acid ingredients are added to it to produce a final equilibrium pH of 4.6 or below; or (ii) it is fermented to produce a final equilibrium pH of 4.6 or below.
"Canned food" means food preserved in air-tight, vacuum-sealed containers that has been heat processed sufficiently under United States Department of Agriculture guidelines to enable storing the food at normal home temperatures.
"Cottage food operation" means an operation conducted by a person who produces or packages food or drink, other than foods and drinks listed as prohibited in paragraph (1) (1.5) of subsection (b) of this Section, in a kitchen located in that person's primary domestic residence or another appropriately designed and equipped kitchen on a farm residential or
commercial-style kitchen on that property for direct sale by
the owner, a family member, or employee.

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

"Department" means the Department of Public Health.

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

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

"Hot fill and hold method" means a method under which food
has been heat processed sufficiently under United States
Department of Agriculture guidelines to enable storing the
food at normal home temperatures.

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

"Local health department" means the State-certified health
department of a unit of local government in which a cottage
food operation is located.
"Low-acid canned food" means any canned food with a
finished equilibrium pH greater than 4.6 and a water activity
(aw) greater than 0.85.

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

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

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

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

(b) Notwithstanding any other provision of law and
except as provided in subsections (e), (d), and (c) of this
Section, neither the Department nor the Department of
Agriculture nor the health department of a unit of local
government may regulate the transaction of food or drink by a
cottage food operation providing that all of the following
conditions are met: (1) (Blank). (1.5) A cottage food
operation may produce homemade food and drink. However, a
cottage food operation, unless properly licensed, certified,
and compliant with all requirements to sell a listed food item under the laws and regulations pertinent to that food item, shall not sell or offer to sell the following food items or processed foods containing the following food items, except as indicated:

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

(B) dairy, except as an ingredient in a non-potentially hazardous food, such as a baked good or candy, such as caramel, subject to paragraph (4), or as an ingredient in a baked good frosting, such as buttercream (1.8);

(C) eggs, except as an ingredient in a non-potentially hazardous hazardous food, including dry noodles, or as an ingredient in a baked good frosting, such as buttercream, if the eggs are not raw, baked good or in dry noodles;

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

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

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

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

   (ii) syrups,
(iii) whole or cut fruit canned in syrup;
(iv) acidified fruit or vegetables prepared and offered for sale in compliance with paragraph (1.6); and
(v) condiments such as prepared mustard, horseradish, or ketchup that do not contain ingredients prohibited under this Section and that are prepared and offered for sale in compliance with paragraph (1.6);
(F) low-acid canned foods such as vegetables, dried beans, and vegetable soups; a low-acid canned food containing fermented or acidified food that is offered for sale must comply with paragraph (3); a low-acid canned food containing tomatoes or canned products containing tomatoes that is offered for sale must comply with paragraph (2);
(G) sprouts;
(H) cut leafy greens, except for cut leafy greens that are dehydrated, acidified, or blanched and frozen;
(I) cut or pureed fresh tomato or melon;
(J) dehydrated tomato or melon;
(K) frozen cut melon;
(L) wild-harvested, non-cultivated mushrooms;
(M) alcoholic beverages; or
(N) kombucha.
(2) (1.6) In order to sell canned tomatoes or a canned product containing tomatoes, a cottage food operator shall either:

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

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

(1.7) A State-certified local public health department that regulates the service of food by a cottage food operation in accordance with subsection (d) of this Section may require a cottage food operation to submit a canned food that is subject to paragraph (1.6), at the cottage food operator's expense, to a commercial laboratory to verify that the product has a final equilibrium pH of 4.6 or below.
(3) In order to sell a fermented or acidified food, a local health department may require a cottage food operation to submit one of the following for each unique product:

(A) a recipe that has been tested by the United States Department of Agriculture or a Cooperative Extension System located in this State or any other state in the United States; or

(B) the results of a pH test from a commercial laboratory to verify that the product has been adequately acidified; if a test is requested it must be conducted at the operator's expense.

A fermented or acidified food shall be packaged according to one of the following standards:

(A) Canned acidified and fermented foods must be canned in mason-style jars with new lids.

(B) Acidified and fermented foods that undergo the hot fill and hold method shall be sold in any container with a tight-fitting lid that is new and clean.

(C) Acidified and fermented foods that are not hot-packed or canned shall be sold in any container that is new, clean, and seals properly and must be stored, transported, and sold at or below 41 degrees.

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

(5) The food and drink produced by a cottage food operation shall be sold directly to consumers for their own consumption and not for resale. Sales directly to consumers include, but are not limited to: sales at farmers' markets, fairs, festivals, or public events or online; pickup from the private home or farm of the cottage food operator if not prohibited by laws of the unit of local government that apply equally to all home-based businesses; delivery to the customer; or pickup from a private property with the consent of the property holder. Cottage food products shall not be shipped out of State.

(6) For cottage food operations that are not utilizing municipal water supplies, such as operations using private wells, a local health department may require a water sample test to verify that the water source being used meets public safety standards. If a test is requested, it must be conducted at the operator's expense.

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

(3) (Blank).

(7) The food packaging must conform to the labeling
The food packaging shall be affixed with a prominent label
or, if the portion of food sold is not packaged
individually, other prominent written notice is provided
to the purchaser that includes: (4) The food packaging
conforms to the labeling requirements of the Illinois
Food, Drug and Cosmetic Act and includes the following
information on the label of each of its products:

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

(B) the identifying registration number provided
by the local health department on the certification of
registration and the name of the municipality or
county in which the registration was filed;

(C) the common or usual name of the food
product;

(D) all ingredients of the food product,
including any colors, artificial flavors, and
preservatives, listed in descending order by
predominance of weight shown with common or usual
names;
The following phrase in prominent lettering: "This product was produced in a home kitchen not subject to public health inspection that may also process common food allergens."

The date the product was processed; and

allergen labeling as specified in federal labeling requirements.

The name and residence of the person preparing and selling products as a cottage food operation must be registered with the local health department and the certificate of registration must be available at the point of sale. A cottage food operation is required to register only with the local health department for the unit of local government in which it is located, but may sell products outside of the units of local government where the cottage food operation is located. No fees shall be charged for registration. Registration shall be for a minimum period of one year.

The person preparing or packaging products as part of a cottage food operation must be a Department-approved certified food protection manager has a Department-approved Food Service Sanitation Management Certificate.

At the point of sale, notice must be provided a placard is displayed in a prominent location that states
the following: "This product was produced in a home kitchen not subject to public health inspection that may also process common food allergens.". At a physical display, notice shall be a placard. Online, notice shall be a message on the cottage food operation's online sales interface.

(b-5) A home rule unit may not regulate cottage food operations in a manner inconsistent with the regulation by the State of cottage food operations under this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(c) Notwithstanding the provisions of subsection (b) of this Section, if the Department or a local health department of a unit of local government has received a consumer complaint or has reason to believe that an imminent health hazard exists or that a cottage food operation's product has been found to be misbranded, adulterated, or not in compliance with the exception for cottage food operations pursuant to this Section, then it may invoke cessation of sales of cottage food products until it deems that the situation has been addressed to the satisfaction of the Department or, if the situation is not amenable to being addressed, revoke the cottage food operation's registration following a process outlined by the Department.
(d) A local health department shall register any eligible cottage food operation that meets the requirements of this Section and shall issue a certificate of registration with an identifying registration number to each registered cottage food operation. Registration shall be valid for one year and the local health department may impose a reasonable fee that is no greater than $25. The regulation by a local health department may include all of the following requirements:

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

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

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

(e) 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 this Section.

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

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

(410 ILCS 625/3.6 rep.)

Section 10. The Food Handling Regulation Enforcement Act is amended by repealing Section 3.6.