



Sen. David Koehler

Filed: 2/18/2022

10200SB3838sam001

LRB102 24488 CPF 36481 a

1 AMENDMENT TO SENATE BILL 3838

2 AMENDMENT NO. _____. Amend Senate Bill 3838 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Food Handling Regulation Enforcement Act
5 is amended by changing Section 3.3 as follows:

6 (410 ILCS 625/3.3)

7 Sec. 3.3. Farmers' markets.

8 (a) The General Assembly finds as follows:

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

14 (2) Farmers' markets serve as a stimulator for local
15 economies and for thousands of new businesses every year,
16 allowing farmers to sell directly to consumers and capture

1 the full retail value of their products. They have become
2 important community institutions and have figured in the
3 revitalization of downtown districts and rural
4 communities.

5 (3) Since 1999, the number of farmers' markets has
6 tripled and new ones are being established every year.
7 There is a lack of consistent regulation from one county
8 to the next, resulting in confusion and discrepancies
9 between counties regarding how products may be sold. There
10 continue to be inconsistencies, confusion, and lack of
11 awareness by consumers, farmers, markets, and local health
12 authorities of required guidelines affecting farmers'
13 markets from county to county.

14 (4) (Blank).

15 (5) (Blank).

16 (6) Recognizing that farmers' markets serve as small
17 business incubators and that farmers' profit margins
18 frequently are narrow, even in direct-to-consumer retail,
19 protecting farmers from costs of regulation that are
20 disproportionate to their profits will help ensure the
21 continued viability of these local farms and small
22 businesses.

23 (b) For the purposes of this Section:

24 "Department" means the Department of Public Health.

25 "Director" means the Director of Public Health.

26 "Farmer" means an individual who is a resident of Illinois

1 and owns or leases land in Illinois that is used as a farm, as
2 that term is defined in Section 1-60 of the Property Tax Code,
3 or that individual's employee.

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

8 "Licensed or permitted processing facility" means a
9 facility that has been inspected, approved, and permitted or
10 licensed by the Department of Agriculture, the Department of
11 Public Health, or a local health department.

12 "Local health department" means a State-certified health
13 department of a unit of local government.

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

17 (c) (Blank).

18 (d) This Section does not intend and shall not be
19 construed to limit the power of counties, municipalities, and
20 other local government units to regulate farmers' markets for
21 the protection of the public health, safety, morals, and
22 welfare, including, but not limited to, licensing requirements
23 and time, place, and manner restrictions, except as specified
24 in this Act. This Section provides for a statewide scheme for
25 the orderly and consistent regulation ~~interpretation of the~~
26 ~~Department's administrative rules pertaining to the safety of~~

1 food and food products sold at farmers' markets.

2 (e) (Blank).

3 (f) (Blank).

4 (g) (Blank).

5 (h) (Blank).

6 (i) (Blank).

7 (j) (Blank).

8 (k) (Blank).

9 (l) (Blank).

10 (m) The following provisions shall apply concerning
11 statewide retail sale of farm products at farmers' markets
12 ~~farmers' market food safety guidelines:~~

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

17 (2) Local health departments may conduct enforcement
18 actions under and pursuant to this Section. The rules and
19 regulations described in this Section shall be
20 consistently enforced by local health authorities
21 throughout the State.

22 (2.5) Notwithstanding any other provision of law
23 except as provided in this Section, local public health
24 departments and all other units of local government are
25 prohibited from creating ~~sanitation~~ guidelines, rules, or
26 regulations for farmers' markets that are more stringent

1 than those farmers' market ~~sanitation~~ regulations
2 contained in this Section. ~~the administrative rules~~
3 ~~adopted by the Department for the purposes of implementing~~
4 ~~this Section and Sections 3.4, 3.5, and 4 of this Act.~~
5 ~~Except as provided for in Sections 3.4 and 4 of this Act,~~
6 ~~this Section does not intend and shall not be construed to~~
7 ~~limit the power of local health departments and other~~
8 ~~government units from requiring licensing and permits for~~
9 ~~the sale of commercial food products, processed food~~
10 ~~products, prepared foods, and potentially hazardous foods~~
11 ~~at farmers' markets or conducting related inspections and~~
12 ~~enforcement activities, so long as those permits and~~
13 ~~licenses do not include unreasonable fees or sanitation~~
14 ~~provisions and rules that are more stringent than those~~
15 ~~laid out in the administrative rules adopted by the~~
16 ~~Department for the purposes of implementing this Section~~
17 ~~and Sections 3.4, 3.5, and 4 of this Act.~~

18 (2.10) A farmer who engages in the sale of any of the
19 following products shall obtain a Farmers' Market Permit
20 from each local health department that chooses to require
21 a Farmers' Market Permit for each unit of local government
22 in which a sales takes place:

23 (A) Frozen, potentially hazardous foods that are
24 prepackaged at a licensed or permitted processing
25 facility but have the main ingredient grown or raised
26 on the farmer's farm.

1 (B) Meat, poultry, dairy, and eggs raised or grown
2 on the farm of the farmer selling the food product.

3 Nothing in this paragraph shall alter any obligation
4 under the Grade A Pasteurized Milk and Milk Products Act.

5 (2.15) As part of the permitting process for a
6 Farmers' Market Permit, a local health department may
7 require the applicant to perform the following:

8 (A) Provide the address of the applicant's farm
9 and his or her contact information.

10 (B) Provide a list of products intended for sale.

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

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

18 (E) Provide effective means to maintain cold food
19 temperatures below 41 degrees Fahrenheit and frozen
20 foods below 32 degrees Fahrenheit.

21 (F) For meat, dairy, or poultry products that do
22 not require refrigeration, provide a product hazard
23 analysis and critical control point (HACCP) or food
24 safety plan from a licensed facility as evidence of
25 product safety at specific temperatures for the
26 specified duration that they are not refrigerated.

1 (G) The name, address, and contact information of
2 the licensed or permitted processing facility at which
3 products were processed.

4 (H) If selling eggs, provide an Illinois Egg
5 License issued by the Department of Agriculture.

6 (I) At least one annual inspection. Inspections
7 may occur on site at the farmers market, or a local
8 health department may require once annually that the
9 farmer applicant go to an alternate location to
10 conduct the inspection.

11 (2.20) A Farmers' Market Permit shall be valid for one
12 year. The fee for obtaining a Farmers' Market Permit shall
13 not exceed the following:

14 (A) \$75 for a limited egg Farmers' Market Permit
15 covering only the sale of eggs.

16 (B) \$175 for a full Farmers' Market Permit
17 covering any combination of meat, poultry, dairy,
18 eggs, and frozen foods grown, raised, or produced on
19 or in a licensed or permitted processing facility.

20 The fee limits imposed under this paragraph shall be
21 increased by 10% on January 1, 2026 and on January 1 of
22 every third year thereafter.

23 (2.25) A local health department shall meet the
24 following requirements in creating, setting, or amending
25 the fee required for a Farmers' Market Permit under this
26 subsection:

1 (A) A local health department shall solicit public
2 input in determining the initial fee or fees for a
3 Farmers' Market Permit, and also at any time a fee
4 increase is proposed by the local health department,
5 by one or all of the following means:

6 (i) Convene at least one public meeting to
7 allow verbal and written public input regarding
8 the intent to create, set, or amend a fee. Before
9 the public meeting, all farmers' market operators
10 in the local health department's jurisdiction and
11 all existing Farmers' Market Permit holders that
12 are permitted in the local health department's
13 jurisdiction shall be notified using the best
14 efforts of the local health department.

15 (ii) Provide public notice and solicit written
16 comments from the public regarding the intent to
17 create, set, or amend a fee. Before the comment
18 period, all farmers' market operators in the
19 jurisdiction and all existing Farmers' Market
20 Permit holders that are permitted in the local
21 health department's jurisdiction shall be notified
22 using the best efforts of the local health
23 department.

24 (B) A local health department shall consider all
25 public comments received in creating, setting, or
26 amending a fee.

1 (C) A local health department has final discretion
2 to create, set, or amend a fee, subject to the fee
3 limits under subparagraph (A) of paragraph (2.20).

4 (D) A local health department shall amend a fee no
5 more than once per year.

6 (E) All comments received under this paragraph
7 shall be provided to the locally elected or appointed
8 governing body of the location that the local health
9 department is located at.

10 (F) A local health department is not required to
11 create a new process to solicit public input regarding
12 the creation, setting, or amending of fees if it
13 already has a process in place that meets the minimum
14 requirements set forth in this paragraph.

15 (2.30) A home rule unit may not regulate Farmers'
16 Market Permits in a manner inconsistent with the
17 regulation by the State of Farmers' Market Permits under
18 this subsection. This paragraph is a limitation under
19 subsection (i) of Section 6 of Article VII of the Illinois
20 Constitution on the concurrent exercise by home rule units
21 of powers and functions exercised by the State.

22 (3) In the case of alleged noncompliance with the
23 provisions described in this Section, local health
24 departments shall issue written notices to vendors and
25 market managers of any noncompliance issues. Citations may
26 be issued to farmers who do not have or display their

1 Farmers' Market Permits. Repeat violations may result in
2 fines or Farmers' Market Permit suspension by a local
3 health department.

4 (4) (Blank). ~~Produce and food products coming within~~
5 ~~the scope of the provisions of this Section shall include,~~
6 ~~but not be limited to, raw agricultural products,~~
7 ~~including fresh fruits and vegetables; popcorn, grains,~~
8 ~~seeds, beans, and nuts that are whole, unprocessed,~~
9 ~~unpackaged, and unsprouted; fresh herb sprigs and dried~~
10 ~~herbs in bunches; baked goods sold at farmers' markets;~~
11 ~~cut fruits and vegetables; milk and cheese products; ice~~
12 ~~cream; syrups; wild and cultivated mushrooms; apple cider~~
13 ~~and other fruit and vegetable juices; herb vinegar;~~
14 ~~garlic in oil; flavored oils; pickles, relishes, salsas,~~
15 ~~and other canned or jarred items; shell eggs; meat and~~
16 ~~poultry; fish; ready to eat foods; commercially produced~~
17 ~~prepackaged food products; and any additional items~~
18 ~~specified in the administrative rules adopted by the~~
19 ~~Department to implement Section 3.3 of this Act.~~

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

25 (o) (Blank).

26 (p) The Department of Public Health and the Department of

1 Agriculture shall adopt administrative rules necessary to
2 implement, interpret, and make specific the provisions of this
3 Section, including, but not limited to, rules concerning
4 labels, sanitation, and food product safety according to the
5 realms of their jurisdiction.

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

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

12 (1) Farmers market vendors shall provide effective
13 means to maintain potentially hazardous food, as defined
14 in Section 4 of this Act, at 41 degrees Fahrenheit or
15 below. As an alternative to mechanical refrigeration, an
16 effectively insulated, hard-sided, cleanable container
17 with sufficient ice or other cooling means that is
18 intended for the storage of potentially hazardous food
19 shall be used. Local health departments shall not limit
20 vendors' choice of refrigeration or cooling equipment and
21 shall not charge a fee for use of such equipment. Local
22 health departments shall not be precluded from requiring
23 an effective alternative form of cooling if a vendor is
24 unable to maintain food at the appropriate temperature.

25 (2) Handwashing stations may be shared by farmers'
26 market vendors if handwashing stations are accessible to

1 vendors.

2 (Source: P.A. 100-488, eff. 6-1-18; 100-805, eff. 1-1-19;

3 101-81, eff. 7-12-19.)".