



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4121

by Rep. Barbara Hernandez

SYNOPSIS AS INTRODUCED:

410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Provides that if a cottage food operation is located in another state, it must register with the local health department for the unit of local government where it will sell products. Provides that a cottage food product shall not be shipped out of State unless it is compliant with the laws of the state to which it is being shipped. Provides that a local health department may establish policies to allow for the indirect sale by retailers of food and drink produced by a cottage food operation within its jurisdiction. Makes conforming changes.

LRB103 33712 SPS 63524 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 4 as follows:

6 (410 ILCS 625/4)

7 Sec. 4. Cottage food operation.

8 (a) For the purpose of this Section:

9 A food is "acidified" if: (i) acid or acid ingredients are
10 added to it to produce a final equilibrium pH of 4.6 or below;
11 or (ii) it is fermented to produce a final equilibrium pH of
12 4.6 or below.

13 "Canned food" means food that has been heat processed
14 sufficiently under United States Department of Agriculture
15 guidelines to enable storing the food at normal home
16 temperatures.

17 "Cottage food operation" means an operation conducted by a
18 person who produces or packages food or drink, other than
19 foods and drinks listed as prohibited in paragraph (1.5) of
20 subsection (b) of this Section, in a kitchen located in that
21 person's primary domestic residence or another appropriately
22 designed and equipped kitchen on a farm for direct sale by the
23 owner, a family member, or employee.

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

4 "Department" means the Department of Public Health.

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

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

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

18 "Local health department" means a State-certified health
19 department of a unit of local government in which a cottage
20 food operation is located or registered.

21 "Local public health department association" means an
22 association solely representing 2 or more State-certified
23 local health departments.

24 "Low-acid canned food" means any canned food with a
25 finished equilibrium pH greater than 4.6 and a water activity
26 (aw) greater than 0.85.

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

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

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

12 (b) A cottage food operation may produce homemade food and
13 drink provided that all of the following conditions are met:

14 (1) (Blank).

15 (1.3) A cottage food operation must register with the
16 local health department for the unit of local government
17 in which it is located, but may sell products outside of
18 the unit of local government where the cottage food
19 operation is located. If a cottage food operation is
20 located in another state, it must register with the local
21 health department for the unit of local government where
22 it will sell products. A copy of the certificate of
23 registration must be available upon request by any local
24 health department.

25 (1.5) A cottage food operation shall not sell or offer
26 to sell the following food items or processed foods

1 containing the following food items, except as indicated:

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

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

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

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

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

16 (F) low-acid canned foods;

17 (G) sprouts;

18 (H) cut leafy greens, except for cut leafy greens
19 that are dehydrated, acidified, or blanched and
20 frozen;

21 (I) cut or pureed fresh tomato or melon;

22 (J) dehydrated tomato or melon;

23 (K) frozen cut melon;

24 (L) wild-harvested, non-cultivated mushrooms;

25 (M) alcoholic beverages; or

26 (N) kombucha.

1 (1.6) In order to sell canned tomatoes or a canned
2 product containing tomatoes, a cottage food operator shall
3 either:

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

8 (B) submit the recipe, at the cottage food
9 operator's expense, to a commercial laboratory
10 according to the commercial laboratory's directions to
11 test that the product has been adequately acidified;
12 use only the varietal or proportionate varieties of
13 tomato included in the tested recipe for all
14 subsequent batches of such recipe; and provide
15 documentation of the annual test results of the recipe
16 submitted under this subparagraph upon registration
17 and to an inspector upon request during any inspection
18 authorized by subsection (d).

19 (2) In order to sell a fermented or acidified food, a
20 cottage food operation shall either:

21 (A) submit a recipe that has been tested by the
22 United States Department of Agriculture or a
23 cooperative extension system located in this State or
24 any other state in the United States; or

25 (B) submit a written food safety plan for each
26 category of products for which the cottage food

1 operator uses the same procedures, such as pickles,
2 kimchi, or hot sauce, and a pH test for a single
3 product that is representative of that category; the
4 written food safety plan shall be submitted annually
5 upon registration and each pH test shall be submitted
6 every 3 years; the food safety plan shall adhere to
7 guidelines developed by the Department.

8 (3) A fermented or acidified food shall be packaged
9 according to one of the following standards:

10 (A) A fermented or acidified food that is canned
11 must be processed in a boiling water bath in a
12 Mason-style jar or glass container with a
13 tight-fitting lid.

14 (B) A fermented or acidified food that is not
15 canned shall be sold in any container that is new,
16 clean, and seals properly and must be stored,
17 transported, and sold at or below 41 degrees.

18 (4) In order to sell a baked good with cheese, a local
19 health department may require a cottage food operation to
20 submit a recipe, at the cottage food operator's expense,
21 to a commercial laboratory to verify that it is
22 non-potentially hazardous before allowing the cottage food
23 operation to sell the baked good as a cottage food.

24 (5) For a cottage food operation that does not utilize
25 a municipal water supply, such as an operation using a
26 private well, a local health department may require a

1 water sample test to verify that the water source being
2 used meets public safety standards related to E. coli
3 coliform. If a test is requested, it must be conducted at
4 the cottage food operator's expense.

5 (6) A person preparing or packaging a product as part
6 of a cottage food operation must be a Department-approved
7 certified food protection manager.

8 (7) Food packaging must conform with the labeling
9 requirements of the Illinois Food, Drug and Cosmetic Act.
10 A cottage food product shall be prepackaged and the food
11 packaging shall be affixed with a prominent label that
12 includes the following:

13 (A) the name of the cottage food operation and
14 unit of local government in which the cottage food
15 operation is located or registered;

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

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

21 (D) all ingredients of the food product, including
22 any color, artificial flavor, and preservative, listed
23 in descending order by predominance of weight shown
24 with the common or usual names;

25 (E) the following phrase in prominent lettering:

26 "This product was produced in a home kitchen not

1 inspected by a health department that may also process
2 common food allergens. If you have safety concerns,
3 contact your local health department.";

4 (F) the date the product was processed; and

5 (G) allergen labeling as specified under federal
6 labeling requirements.

7 (8) Food packaging may include the designation
8 "Illinois-grown", "Illinois-sourced", or "Illinois farm
9 product" if the packaged product is a local farm or food
10 product as that term is defined in Section 5 of the Local
11 Food, Farms, and Jobs Act.

12 (9) In the case of a product that is difficult to
13 properly label or package, or for other reasons, such as
14 wholesale purchases, the local health department of the
15 location where the product is sold may grant permission to
16 sell products that are not prepackaged, in which case
17 other prominent written notice shall be provided to the
18 purchaser.

19 (10) At the point of sale, notice must be provided in a
20 prominent location that states the following: "This
21 product was produced in a home kitchen not inspected by a
22 health department that may also process common food
23 allergens." At a physical display, notice shall be a
24 placard. Online, notice shall be a message on the cottage
25 food operation's online sales interface at the point of
26 sale.

1 (11) Food and drink produced by a cottage food
2 operation shall be sold directly to consumers for their
3 own consumption and not for resale. Sales directly to
4 consumers include, but are not limited to, sales at or
5 through:

6 (A) farmers' markets;

7 (B) fairs, festivals, public events, or online;

8 (C) pickup from the private home or farm of the
9 cottage food operator, if the pickup is not prohibited
10 by any law of the unit of local government that applies
11 equally to all cottage food operations; in a
12 municipality with a population of 1,000,000 or more, a
13 cottage food operator shall comply with any law of the
14 municipality that applies equally to all home-based
15 businesses;

16 (D) delivery to the customer; and

17 (E) pickup from a third-party private property
18 with the consent of the third-party property holder.

19 (12) Only food that is non-potentially hazardous may
20 be shipped. A cottage food product shall not be shipped
21 out of State unless it is compliant with the laws of the
22 state to which it is being shipped. Each cottage food
23 product that is shipped must be sealed in a manner that
24 reveals tampering, including, but not limited to, a
25 sticker or pop top.

26 (c) A local health department shall register any eligible

1 cottage food operation that meets the requirements of this
2 Section and shall issue a certificate of registration with an
3 identifying registration number to each registered cottage
4 food operation. A local health department may establish a
5 self-certification program for cottage food operators to
6 affirm compliance with applicable laws, rules, and
7 regulations. Registration shall be completed annually and the
8 local health department may impose a fee not to exceed \$50.

9 (c-5) A local health department may establish policies to
10 allow for the indirect sale by retailers of food and drink
11 produced by a cottage food operation within its jurisdiction.

12 (d) In the event of a consumer complaint or foodborne
13 illness outbreak, upon notice from a different local health
14 department, or if the Department or a local health department
15 has reason to believe that an imminent health hazard exists or
16 that a cottage food operation's product has been found to be
17 misbranded, adulterated, or not in compliance with the
18 conditions for cottage food operations set forth in this
19 Section, the Department or the local health department may:

20 (1) inspect the premises of the cottage food operation
21 in question;

22 (2) set a reasonable fee for the inspection; and

23 (3) invoke penalties and the cessation of the sale of
24 cottage food products until it deems that the situation
25 has been addressed to the satisfaction of the Department
26 or local health department; if the situation is not

1 amenable to being addressed, the local health department
2 may revoke the cottage food operation's registration
3 following a process outlined by the local health
4 department.

5 (e) A local health department that receives a consumer
6 complaint or a report of foodborne illness related to a
7 cottage food operator in another jurisdiction shall refer the
8 complaint or report to the local health department where the
9 cottage food operator is registered.

10 (f) By January 1, 2022, the Department, in collaboration
11 with local public health department associations and other
12 stakeholder groups, shall write and issue administrative
13 guidance to local health departments on the following:

14 (1) development of a standard registration form,
15 including, if applicable, a written food safety plan;

16 (2) development of a Home-Certification Self Checklist
17 Form;

18 (3) development of a standard inspection form and
19 inspection procedures; and

20 (4) procedures for cottage food operation workspaces
21 that include, but are not limited to, cleaning products,
22 general sanitation, and requirements for functional
23 equipment.

24 (g) A person who produces or packages a non-potentially
25 hazardous baked good for sale by a religious, charitable, or
26 nonprofit organization for fundraising purposes is exempt from

1 the requirements of this Section.

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

9 (i) The Department may adopt rules as may be necessary to
10 implement the provisions of this Section.

11 (Source: P.A. 101-81, eff. 7-12-19; 102-633, eff. 1-1-22.)