



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4280

Introduced 1/16/2024, by Rep. Blaine Wilhour

SYNOPSIS AS INTRODUCED:

410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Provides that if the unit of local government in which the cottage food operation is located does not have a local health department, the cottage food operation must register with the nearest local health department. Makes a conforming change.

LRB103 35457 RPS 65526 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, if the unit of local government
21 where the cottage food operation is located does not have a
22 State-certified health department, registered.

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

26 "Low-acid canned food" means any canned food with a

1 finished equilibrium pH greater than 4.6 and a water activity
2 (aw) greater than 0.85.

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

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

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

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

16 (1) (Blank).

17 (1.3) A cottage food operation must register with the
18 local health department for the unit of local government
19 in which it is located, or the nearest local health
20 department if the unit of local government where the
21 cottage food operation is located does not have a local
22 health department, and ~~but~~ may sell products outside of
23 the unit of local government where the cottage food
24 operation is located. A copy of the certificate of
25 registration must be available upon request by any local
26 health department.

1 (1.5) A cottage food operation shall not sell or offer
2 to sell the following food items or processed foods
3 containing the following food items, except as indicated:

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

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

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

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

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

18 (F) low-acid canned foods;

19 (G) sprouts;

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

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

24 (J) dehydrated tomato or melon;

25 (K) frozen cut melon;

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

1 (M) alcoholic beverages; or

2 (N) kombucha.

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

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

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

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

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

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

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

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

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

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

26 (5) For a cottage food operation that does not utilize

1 a municipal water supply, such as an operation using a
2 private well, a local health department may require a
3 water sample test to verify that the water source being
4 used meets public safety standards related to E. coli
5 coliform. If a test is requested, it must be conducted at
6 the cottage food operator's expense.

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

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

15 (A) the name of the cottage food operation and
16 unit of local government in which the cottage food
17 operation is located;

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

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

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

1 (E) the following phrase in prominent lettering:
2 "This product was produced in a home kitchen not
3 inspected by a health department that may also process
4 common food allergens. If you have safety concerns,
5 contact your local health department.";

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

7 (G) allergen labeling as specified under federal
8 labeling requirements.

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

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

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

1 sale.

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

7 (A) farmers' markets;

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

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

17 (D) delivery to the customer; and

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

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

25 (c) A local health department shall register any eligible
26 cottage food operation that meets the requirements of this

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

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

16 (1) inspect the premises of the cottage food operation
17 in question;

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

19 (3) invoke penalties and the cessation of the sale of
20 cottage food products until it deems that the situation
21 has been addressed to the satisfaction of the Department
22 or local health department; if the situation is not
23 amenable to being addressed, the local health department
24 may revoke the cottage food operation's registration
25 following a process outlined by the local health
26 department.

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

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

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

12 (2) development of a Home-Certification Self Checklist
13 Form;

14 (3) development of a standard inspection form and
15 inspection procedures; and

16 (4) procedures for cottage food operation workspaces
17 that include, but are not limited to, cleaning products,
18 general sanitation, and requirements for functional
19 equipment.

20 (g) A person who produces or packages a non-potentially
21 hazardous baked good for sale by a religious, charitable, or
22 nonprofit organization for fundraising purposes is exempt from
23 the requirements of this Section.

24 (h) A home rule unit may not regulate cottage food
25 operations in a manner inconsistent with the regulation by the
26 State of cottage food operations under this Section. This

1 Section is a limitation under subsection (i) of Section 6 of
2 Article VII of the Illinois Constitution on the concurrent
3 exercise by home rule units of powers and functions exercised
4 by the State.

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

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