

# SB2617



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2617

Introduced 10/24/2023, by Sen. Jason Plummer

### SYNOPSIS AS INTRODUCED:

410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Provides that if a county government does not have a local health department, the county government shall enter into an agreement or contract with an adjacent local health department to register cottage food operations in the county's jurisdiction. Provides that the adjacent local health department where the cottage food operation registers has the power to take specified actions pertaining to complaints, inspections, fees, and penalties. Makes a conforming change.

LRB103 34813 RPS 64668 b

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

A BILL FOR

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 cottage food operation is  
21 located in a county that does not have a local health  
22 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, but may sell products outside of  
20 the unit of local government where the cottage food  
21 operation is located. If a county government does not have  
22 a local health department, the county government shall  
23 enter into an agreement or contract with an adjacent local  
24 health department to register cottage food operations in  
25 the county's jurisdiction. The adjacent local health  
26 department where the cottage food operation registers has

1       the power to take the actions specified in subsection (d).

2       A copy of the certificate of registration must be  
3       available upon request by any local health department.

4           (1.5) A cottage food operation shall not sell or offer  
5       to sell the following food items or processed foods  
6       containing the following food items, except as indicated:

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

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

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

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

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

21          (F) low-acid canned foods;

22          (G) sprouts;

23          (H) cut leafy greens, except for cut leafy greens  
24       that are dehydrated, acidified, or blanched and  
25       frozen;

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

- 1 (J) dehydrated tomato or melon;  
2 (K) frozen cut melon;  
3 (L) wild-harvested, non-cultivated mushrooms;  
4 (M) alcoholic beverages; or  
5 (N) kombucha.

6 (1.6) In order to sell canned tomatoes or a canned  
7 product containing tomatoes, a cottage food operator shall  
8 either:

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

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

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

26 (A) submit a recipe that has been tested by the

1 United States Department of Agriculture or a  
2 cooperative extension system located in this State or  
3 any other state in the United States; or

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

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

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

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

23 (4) In order to sell a baked good with cheese, a local  
24 health department may require a cottage food operation to  
25 submit a recipe, at the cottage food operator's expense,  
26 to a commercial laboratory to verify that it is

1 non-potentially hazardous before allowing the cottage food  
2 operation to sell the baked good as a cottage food.

3 (5) For a cottage food operation that does not utilize  
4 a municipal water supply, such as an operation using a  
5 private well, a local health department may require a  
6 water sample test to verify that the water source being  
7 used meets public safety standards related to E. coli  
8 coliform. If a test is requested, it must be conducted at  
9 the cottage food operator's expense.

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

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

18 (A) the name of the cottage food operation and  
19 unit of local government in which the cottage food  
20 operation is located;

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

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

26 (D) all ingredients of the food product, including



1 any color, artificial flavor, and preservative, listed  
2 in descending order by predominance of weight shown  
3 with the common or usual names;

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

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

10 (G) allergen labeling as specified under federal  
11 labeling requirements.

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

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

23 (10) At the point of sale, notice must be provided in a  
24 prominent location that states the following: "This  
25 product was produced in a home kitchen not inspected by a  
26 health department that may also process common food

1 allergens." At a physical display, notice shall be a  
2 placard. Online, notice shall be a message on the cottage  
3 food operation's online sales interface at the point of  
4 sale.

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

10 (A) farmers' markets;

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

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

20 (D) delivery to the customer; and

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

23 (12) Only food that is non-potentially hazardous may  
24 be shipped. A cottage food product shall not be shipped  
25 out of State. Each cottage food product that is shipped  
26 must be sealed in a manner that reveals tampering,

1 including, but not limited to, a sticker or pop top.

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

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

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

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

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

1           may revoke the cottage food operation's registration  
2           following a process outlined by the local health  
3           department.

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

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

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

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

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

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

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

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

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

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