

SB3544



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3544

Introduced 2/9/2024, 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. Specifies, in a provision requiring cottage food operations to sell directly to consumers, that sales directly to consumers include, among other things, sales at or through mobile farmers markets with the consent of the third-party property holder. Defines "mobile farmers market".

LRB103 38723 CES 69552 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, is 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 "Mobile farmers market" means a farmers market that is
6 operated from a movable motor drive or propelled vehicle or
7 portable structure that can change location. A mobile farmers
8 market may be owned and operated by a farmer, farmer
9 cooperative, or a third-party selling products on commission
10 with the intent of a direct sale to an end consumer.

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

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

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

22 (1) (Blank).

23 (1.3) A cottage food operation must register with the
24 local health department for the unit of local government
25 in which it is located, but may sell products outside of
26 the unit of local government where the cottage food

1 operation is located. If a county government does not have
2 a local health department, the county government shall
3 enter into an agreement or contract with an adjacent local
4 health department to register cottage food operations in
5 the county's jurisdiction. The adjacent local health
6 department where the cottage food operation registers has
7 the power to take the actions specified in subsection (d).

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

10 (1.5) A cottage food operation shall not sell or offer
11 to sell the following food items or processed foods
12 containing the following food items, except as indicated:

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

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

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

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

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

- 1 (F) low-acid canned foods;
- 2 (G) sprouts;
- 3 (H) cut leafy greens, except for cut leafy greens
4 that are dehydrated, acidified, or blanched and
5 frozen;
- 6 (I) cut or pureed fresh tomato or melon;
- 7 (J) dehydrated tomato or melon;
- 8 (K) frozen cut melon;
- 9 (L) wild-harvested, non-cultivated mushrooms;
- 10 (M) alcoholic beverages; or
- 11 (N) kombucha.

12 (1.6) In order to sell canned tomatoes or a canned
13 product containing tomatoes, a cottage food operator shall
14 either:

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

19 (B) submit the recipe, at the cottage food
20 operator's expense, to a commercial laboratory
21 according to the commercial laboratory's directions to
22 test that the product has been adequately acidified;
23 use only the varietal or proportionate varietals of
24 tomato included in the tested recipe for all
25 subsequent batches of such recipe; and provide
26 documentation of the annual test results of the recipe

1 submitted under this subparagraph upon registration
2 and to an inspector upon request during any inspection
3 authorized by subsection (d).

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

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

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

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

21 (A) A fermented or acidified food that is canned
22 must be processed in a boiling water bath in a
23 Mason-style jar or glass container with a
24 tight-fitting lid.

25 (B) A fermented or acidified food that is not
26 canned shall be sold in any container that is new,

1 clean, and seals properly and must be stored,
2 transported, and sold at or below 41 degrees.

3 (4) In order to sell a baked good with cheese, a local
4 health department may require a cottage food operation to
5 submit a recipe, at the cottage food operator's expense,
6 to a commercial laboratory to verify that it is
7 non-potentially hazardous before allowing the cottage food
8 operation to sell the baked good as a cottage food.

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

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

19 (7) Food packaging must conform with the labeling
20 requirements of the Illinois Food, Drug and Cosmetic Act.
21 A cottage food product shall be prepackaged and the food
22 packaging shall be affixed with a prominent label that
23 includes the following:

24 (A) the name of the cottage food operation and
25 unit of local government in which the cottage food
26 operation is located;

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

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

6 (D) all ingredients of the food product, including
7 any color, artificial flavor, and preservative, listed
8 in descending order by predominance of weight shown
9 with the common or usual names;

10 (E) the following phrase in prominent lettering:

11 "This product was produced in a home kitchen not
12 inspected by a health department that may also process
13 common food allergens. If you have safety concerns,
14 contact your local health department.";

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

16 (G) allergen labeling as specified under federal
17 labeling requirements.

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

23 (9) In the case of a product that is difficult to
24 properly label or package, or for other reasons, the local
25 health department of the location where the product is
26 sold may grant permission to sell products that are not

1 prepackaged, in which case other prominent written notice
2 shall be provided to the purchaser.

3 (10) At the point of sale, notice must be provided in a
4 prominent location that states the following: "This
5 product was produced in a home kitchen not inspected by a
6 health department that may also process common food
7 allergens." At a physical display, notice shall be a
8 placard. Online, notice shall be a message on the cottage
9 food operation's online sales interface at the point of
10 sale.

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

16 (A) farmers' markets;

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

18 (C) pickup from the private home or farm of the
19 cottage food operator, if the pickup is not prohibited
20 by any law of the unit of local government that applies
21 equally to all cottage food operations; in a
22 municipality with a population of 1,000,000 or more, a
23 cottage food operator shall comply with any law of the
24 municipality that applies equally to all home-based
25 businesses;

26 (D) delivery to the customer; ~~and~~

1 (E) pickup from a third-party private property
2 with the consent of the third-party property holder;
3 and-

4 (F) mobile farmers markets.

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

10 (c) A local health department shall register any eligible
11 cottage food operation that meets the requirements of this
12 Section and shall issue a certificate of registration with an
13 identifying registration number to each registered cottage
14 food operation. A local health department may establish a
15 self-certification program for cottage food operators to
16 affirm compliance with applicable laws, rules, and
17 regulations. Registration shall be completed annually and the
18 local health department may impose a fee not to exceed \$50.

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

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

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

4 (3) invoke penalties and the cessation of the sale of
5 cottage food products until it deems that the situation
6 has been addressed to the satisfaction of the Department
7 or local health department; if the situation is not
8 amenable to being addressed, the local health department
9 may revoke the cottage food operation's registration
10 following a process outlined by the local health
11 department.

12 (e) A local health department that receives a consumer
13 complaint or a report of foodborne illness related to a
14 cottage food operator in another jurisdiction shall refer the
15 complaint or report to the local health department where the
16 cottage food operator is registered.

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

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

23 (2) development of a Home-Certification Self Checklist
24 Form;

25 (3) development of a standard inspection form and
26 inspection procedures; and

1 (4) procedures for cottage food operation workspaces
2 that include, but are not limited to, cleaning products,
3 general sanitation, and requirements for functional
4 equipment.

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

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

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

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