

# SB3238



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3238

Introduced 2/1/2012, by Sen. Donne E. Trotter

#### SYNOPSIS AS INTRODUCED:

410 ILCS 625/4

Amends the Food Handling Regulation Enforcement Act. Provides that a State-certified local public health department may, upon providing a written statement to the Department of Public Health, regulate or restrict (now regulate) the service of food by a cottage food operation. Effective on January 1, 2013.

LRB097 16982 RPM 62173 b

A BILL FOR

1 AN ACT concerning public 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 "Cottage food operation" means a person who produces or  
10 packages non-potentially hazardous food in a kitchen of that  
11 person's primary domestic residence for direct sale by the  
12 owner or a family member, stored in the residence where the  
13 food is made.

14 "Farmers' market" means a common facility or area where  
15 farmers gather to sell a variety of fresh fruits and vegetables  
16 and other locally produced farm and food products directly to  
17 consumers.

18 "Potentially hazardous food" means a food that is  
19 potentially hazardous according to the Federal Food and Drug  
20 Administration 2009 Food Code (FDA 2009 Food Code) or any  
21 subsequent amendments to the FDA 2009 Food Code. Potentially  
22 hazardous food (PHF) in general means a food that requires time  
23 and temperature control for safety (TCS) to limit pathogenic

1 microorganism growth or toxin formation. In accordance with the  
2 FDA 2009 Food Code, potentially hazardous food does not include  
3 a food item that because of its pH or Aw value, or interaction  
4 of Aw and pH values, is designated as a non-PHF/non-TCS food in  
5 Table A or B of the FDA 2009 Food Code's potentially hazardous  
6 food definition.

7 (b) Notwithstanding any other provision of law and except  
8 as provided in subsections (c) and (d) of this Section, neither  
9 the Department of Public Health nor the Department of  
10 Agriculture nor the health department of a unit of local  
11 government may regulate the service of food by a cottage food  
12 operation providing that all of the following conditions are  
13 met:

14 (1) The food is not a potentially hazardous baked good,  
15 jam, jelly, preserve, fruit butter, dry herb, dry herb  
16 blend, or dry tea blend and is intended for end-use only.  
17 The following provisions shall apply:

18 (A) The following jams, jellies and preserves are  
19 allowed: apple, apricot, grape, peach, plum, quince,  
20 orange, nectarine, tangerine, blackberry, raspberry,  
21 blueberry, boysenberry, cherry, cranberry, strawberry,  
22 red currants, or a combination of these fruits.  
23 Rhubarb, tomato, and pepper jellies or jams are not  
24 allowed. Any other jams, jellies, or preserves not  
25 listed may be produced by a cottage food operation  
26 provided their recipe has been tested and documented by

1 a commercial laboratory, at the expense of the cottage  
2 food operation, as being not potentially hazardous,  
3 containing a pH equilibrium of less than 4.6.

4 (B) The following fruit butters are allowed:  
5 apple, apricot, grape, peach, plum, quince, and prune.  
6 Pumpkin butter, banana butter, and pear butter are not  
7 allowed. Fruit butters not listed may be produced by a  
8 cottage food operation provided their recipe has been  
9 tested and documented by a commercial laboratory, at  
10 the expense of the cottage food operation, as being not  
11 potentially hazardous, containing a pH equilibrium of  
12 less than 4.6.

13 (C) Baked goods, such as, but not limited to,  
14 breads, cookies, cakes, pies, and pastries are  
15 allowed. Only high-acid fruit pies that use the  
16 following fruits are allowed: apple, apricot, grape,  
17 peach, plum, quince, orange, nectarine, tangerine,  
18 blackberry, raspberry, blueberry, boysenberry, cherry,  
19 cranberry, strawberry, red currants or a combination  
20 of these fruits. Fruit pies not listed may be produced  
21 by a cottage food operation provided their recipe has  
22 been tested and documented by a commercial laboratory,  
23 at the expense of the cottage food operation, as being  
24 not potentially hazardous, containing a pH equilibrium  
25 of less than 4.6. The following are potentially  
26 hazardous and prohibited from production and sale by a

1 cottage food operation: pumpkin pie, sweet potato pie,  
2 cheesecake, custard pies, creme pies, and pastries  
3 with potentially hazardous fillings or toppings.

4 (2) The food is to be sold at a farmers' market.

5 (3) Gross receipts from the sale of food exempted under  
6 this Section do not exceed \$25,000 in a calendar year.

7 (4) The food packaging conforms to the labeling  
8 requirements of the Illinois Food, Drug and Cosmetic Act  
9 and includes the following information on the label of each  
10 of its products:

11 (A) the name and address of the cottage food  
12 operation;

13 (B) the common or usual name of the food product;

14 (C) all ingredients of the food product, including  
15 any colors, artificial flavors, and preservatives,  
16 listed in descending order by predominance of weight  
17 shown with common or usual names;

18 (D) the following phrase: "This product was  
19 produced in a home kitchen not subject to public health  
20 inspection that may also process common food  
21 allergens.";

22 (E) the date the product was processed; and

23 (F) allergen labeling as specified in federal  
24 labeling requirements.

25 (5) The name and residence of the person preparing and  
26 selling products as a cottage food operation is registered

1 with the health department of a unit of local government  
2 where the cottage food operation resides. No fees shall be  
3 charged for registration.

4 (6) The person preparing and selling products as a  
5 cottage food operation has a Department of Public Health  
6 approved Food Service Sanitation Management Certificate.

7 (7) At the point of sale a placard is displayed in a  
8 prominent location that states the following: "This  
9 product was produced in a home kitchen not subject to  
10 public health inspection that may also process common food  
11 allergens."

12 (c) Notwithstanding the provisions of subsection (b) of  
13 this Section, if the Department of Public Health or the health  
14 department of a unit of local government has received a  
15 consumer complaint or has reason to believe that an imminent  
16 health hazard exists or that a cottage food operation's product  
17 has been found to be misbranded, adulterated, or not in  
18 compliance with the exception for cottage food operations  
19 pursuant to this Section, then it may invoke cessation of sales  
20 until it deems that the situation has been addressed to the  
21 satisfaction of the Department.

22 (d) Notwithstanding the provisions of subsection (b) of  
23 this Section, a State-certified local public health department  
24 may, upon providing a written statement to the Department of  
25 Public Health, regulate or restrict the service of food by a  
26 cottage food operation. The regulation by a State-certified

1 local public health department may include all of the following  
2 requirements:

3 (1) That the cottage food operation (A) register with  
4 the State-certified local public health department, which  
5 may include a reasonable fee set by the State-certified  
6 local public health department notwithstanding paragraph  
7 (5) of subsection (b) of this Section and (B) agree in  
8 writing at the time of registration to grant access to the  
9 State-certified local public health department to conduct  
10 an inspection of the cottage food operation's primary  
11 domestic residence in the event of a consumer complaint or  
12 foodborne illness outbreak.

13 (2) That in the event of a consumer complaint or  
14 foodborne illness outbreak the State-certified local  
15 public health department is allowed to (A) inspect the  
16 premises of the cottage food operation in question and (B)  
17 set a reasonable fee for that inspection.

18 (Source: P.A. 97-393, eff. 1-1-12.)

19 Section 99. Effective date. This Act takes effect January  
20 1, 2013.