



New Law Will Ease Regulatory Burdens for Small Food Producers

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In late May, the Illinois legislature passed Senate Bill 840, which exempts small, home-based food businesses producing certain "non-hazardous" food from state licensing and inspection oversight. The aim of the bill, which now awaits Governor Quinn's signature, is to ease the regulatory burdens that these small "cottage food" producers face when trying to sell their products directly to consumers. This represents a significant change to the state's regulatory scheme for food products – previously, all food sold to consumers had to be made in commercial kitchens licensed and inspected by the Illinois Department of Public Health (IDPH). In passing the Bill, the Illinois legislature follows on the heels of at least twenty other states that have either passed or are considering similar legislation.

A burgeoning local food movement and a sour economy have sent many back to their kitchens as a source of income. Once there, however, these would-be producers find that the food safety regulatory system imposes often-insurmountable financial hurdles: licensing and inspection fees, burdensome paperwork, and commercial kitchen requirements that can cost tens of thousands of dollars. The new law alleviates many of these constraints for "cottage food operations."

The bill defines a "cottage food operation" as a "person who produces or packages non-potentially hazardous food in a kitchen of that person's primary domestic residence for direct sale by the owner or family member." The bill incorporates the FDA Food Code's definition of "non-potentially hazardous food," but also declares a variety of specific foods – primarily baked goods, certain fruit jams and jellies, and herb and tea blends – to be "non-hazardous." The core of the bill is a provision that prohibits both IDPH and local health departments from regulating the sale of these goods by cottage food producers. This inspection exemption applies only to truly small producers—cottage food operations with gross receipts less than \$25,000 per year.

The new law, however, does not amount to a blanket deregulation; rather, it contains several important disclosure and transparency provisions. First, cottage food operations must register with the local health department. Second, the bill requires cottage food producers to label their products in accordance with the FDA Food Code, including an ingredients list, the common or usual name of the product, the name and address of the producer, the date of manufacture, and allergen labeling, if applicable. Furthermore, the bill requires all cottage food product labels to carry the phrase "This product was produced in a home kitchen not subject to public health inspection that may also process common food allergens." Producers also must display a placard with identical warnings at the point of sale. Finally, the law requires producers

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to complete an IDPH-certified food safety management training program before beginning operations. The bill also includes a backstop provision that gives health authorities the ability to act in the case of a food safety emergency.

The push for cottage food bills represents the idea – heretofore largely not present in state regulatory schemes – that food safety regulation should (1) be scale-appropriate, and (2) target high-risk products. And by conditioning the regulatory exemption upon a gross receipts threshold, the bill encourages small business growth by easing regulatory start-up costs.