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**SECOND SUBSTITUTE HOUSE BILL 1258**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Frame, Peterson, Dolan, Ryu, Leavitt, Simmons, Jacobsen, Lovick, Taylor, Fitzgibbon, Fey, Ramel, Ortiz-Self, Shewmake, J. Johnson, Bateman, Eslick, Ramos, Davis, Thai, Santos, Chambers, Wylie, Callan, Wicks, Rule, Sutherland, Chase, Macri, Gregerson, Slatter, Berg, and Riccelli)

AN ACT Relating to the operation, authorization, and permitting of microenterprise home kitchens; adding a new section to chapter 69.07 RCW; adding a new section to chapter 70.54 RCW; adding a new chapter to Title 69 RCW; creating new sections; and providing expiration dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. "Domestic residence" does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

(2) "Home kitchen" means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

(3) "Internet food service intermediary" means an entity that facilitates the sale of home-cooked meals offered by a microenterprise home kitchen operation through the entity's digital network.

(4)(a) "Microenterprise home kitchen operation" means a food facility that is operated by a person in the person's primary domestic residence where food is stored, handled, and prepared for consumers.

(b) "Microenterprise home kitchen operation" does not include a cottage food operation.

(5) "Permitted area" means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

(6) "Potentially hazardous food" means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum.

(7) "Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment. The local health jurisdiction, acting through the local health officer, is the regulatory authority for the activity of a food establishment, except as otherwise provided by law.

(8) "State board" means the state board of health.

(9) "Third-party delivery service" means an outsourced entity that provides delivery logistics of purchased meals from vendor to consumer.

NEW SECTION. **Sec.**  (1) The state department of health shall develop and begin a pilot program to allow for microenterprise home kitchen operations.

(a) Starting July 1, 2022, local health jurisdictions are authorized to permit up to 100 microenterprise home kitchen operations during the first year of the program as follows:

(i) A county with a population over 2,000,000 may issue up to 30 permits;

(ii) A county with a population between 490,000 and 2,000,000 may issue up to 20 permits; and

(iii) A county with a population less than 490,000 may issue up to 10 permits.

(b) Local health jurisdictions are authorized to permit up to 200 additional home kitchen operations during the second year of the program as follows:

(i) A county with a population over 2,000,000 may issue up to 60 permits;

(ii) A county with a population between 490,000 and 2,000,000 may issue up to 40 permits; and

(iii) A county with a population less than 490,000 may issue up to 20 permits.

(2) Local health jurisdictions are authorized to permit up to 200 additional microenterprise home kitchen operations each year thereafter.

(3) The state board shall adopt rules for the authorization, operation, and regulation of microenterprise home kitchen operations by July 1, 2024.

(4) Microenterprise home kitchen operations may engage in one or more of the following activities, subject to rules adopted pursuant to this section:

(a) The direct sale to consumers of food products to be consumed at a location other than the premises of the microenterprise home kitchen operation, whether delivered directly to the consumer by the microenterprise home kitchen operation or by an intermediary; and

(b) Catering activities in which a specific menu and amount of food is prepared on the premises of the microenterprise home kitchen operation for service to a customer at a different location.

(5) Rules adopted pursuant to this section must provide that microenterprise home kitchen operations are subject to the following restrictions:

(a) Food preparation may not involve processes that require a hazard analysis critical control point plan from the department of health, the production, service, or sale of raw milk or raw milk products, as identified in RCW 15.36.012, curing of meats, or the service or sale of raw oysters or other shellfish;

(b) The operation may sell no more than 20 individual meals or meal equivalent portions per day and no more than 100 individual meals or meal equivalent portions per week;

(c) The operation may not engage in indirect sales to consumers;

(d) Food products prepared in a microenterprise home kitchen operation may not be delivered outside of the state by the operator of the microenterprise home kitchen operation unless allowed in the state of delivery;

(e) Food produced in a microenterprise home kitchen operation may not be delivered by a third-party delivery service;

(f) An internet food service intermediary must conspicuously post any fees associated with their digital network in high school equivalent English, offer or provide liability insurance, and notify microenterprise home kitchen operations in writing 30 days in advance of any fee change exceeding a two percent increase;

(g) The microenterprise home kitchen operation must be covered by a liability insurance policy, in an amount not less than $500,000, that would cover any incidents arising from the sale or consumption of food, including protection for consumers for injuries arising from a foodborne illness;

(h) The microenterprise home kitchen operation must post any inspection scores, grades, or other evaluation records required by the local health jurisdiction at the entry of the operation during business hours and on any internet page or internet food service intermediary that is offering the operation's food for sale;

(i) Food produced in a microenterprise home kitchen operation may not be held hot for more than two hours before pickup or delivery; and

(j) Food produced in a microenterprise home kitchen operation may not be held overnight.

(6) Rules adopted pursuant to this section may include, but are not limited to, the following requirements:

(a) The restrictions provided in subsection (5) of this section;

(b) The application for and renewal of permits as provided in section 4 of this act;

(c) Inspections as provided in section 4 of this act;

(d) Sanitary procedures;

(e) Facility, equipment, and utensil requirements;

(f) Labeling specificity beyond the requirements of this section;

(g) Requirements for clean water sources and waste and wastewater disposal; and

(h) Requirements for washing and other hygienic practices.

(7) Microenterprise home kitchen operations must follow the requirements of the current food service code in chapter 246-215 WAC, unless otherwise exempted. Rules adopted pursuant to this section must exempt microenterprise home kitchen operations from the following provisions of the food service code, chapter 246-215 WAC:

(a) Handwashing facilities requirements, provided that a sink with one or two large tubs placed next to it is used for washing, rinsing, and sanitizing; and warm water, soap, and disposable paper towels are available and used in the identified primary toilet room and microenterprise home kitchen operation area by all persons working in the microenterprise home kitchen operation;

(b) Prohibitions on the presence of persons unnecessary to the microenterprise home kitchen operation in the food preparation, food storage, or warewashing areas;

(c) Requirements relating to posting of "no smoking or vaping" signs;

(d) Limitations on employee consumption of food, drink, marijuana or vapor products, or tobacco outside of designated areas when not preparing food for sale;

(e) Display guard, cover, and container requirements. However, when food is left out uncovered on a kitchen counter or table due to processing steps, such as cooling, active controls are in place to prevent inadvertent contamination by children or pets. Active controls may include presence of the permittee or an employee or use of child or pet barriers;

(f) Limitations on outdoor display and sale of foods;

(g) Requirements to provide clean drinking cups and tableware;

(h) Requirements pertaining to the characteristics and certification of utensils and equipment, provided that the utensils and equipment are designed to retain their characteristic qualities under normal use conditions;

(i) Requirements pertaining to the characteristics, construction, and multiuse of food-contact and nonfood-contact surfaces, provided that food-contact surfaces are smooth, easily cleanable, and in good repair;

(j) Requirements pertaining to the characteristics, construction, and disassembly of clean in place equipment;

(k) Limitations on the use of wood as a food-contact surface and in connection with other equipment;

(l) Any requirement relating to ventilation, provided that gases, odors, steam, heat, grease, vapors, and smoke are able to escape from the kitchen, unless a serious risk of fire exists;

(m) Requirements that cold or hot holding equipment used for potentially hazardous food be equipped with integral or permanently affixed temperature measuring devices or product mimicking sensors;

(n) Requirements pertaining to the installation of fixed, floor-mounted, and table-mounted equipment;

(o) Dedicated laundry facility requirements, provided that linens used in connection with the microenterprise home kitchen operation must be laundered separately from the household and other laundry;

(p) Requirements pertaining to water, plumbing, drainage, and waste, provided that microenterprise home kitchen operations that have a private water supply have the supply tested at least 60 days prior to permitting and at least annually thereafter and demonstrate through a written record of testing that the water supply is potable and provided that microenterprise home kitchen operations that have a private on-site sewage system have had the system inspected within one year prior to permitting;

(q) Any requirement that a microenterprise home kitchen operation have more than one toilet facility or that access to the toilet facility not require passage through the food preparation, food storage, or utensil washing areas;

(r) Light intensity, light source, and lightbulb requirements, provided that food preparation areas are well-lighted by natural or artificial light whenever food is being prepared;

(s) Requirements to provide and use lockers, storage facilities, and designated dressing areas, and that microenterprise home kitchen operation premises be free of litter and items that are unnecessary to the operation, provided that personal effects and clothing not ordinarily found in a microenterprise home kitchen operation are placed or stored away from food preparation areas and dressing takes place outside of the kitchen;

(t) Limitations on the presence and handling of animals, such as domestic, service, or patrol animals, provided that a pet control plan that precludes pet entry or access to all areas of the microenterprise home kitchen operation during food cooking or preparation is in place;

(u) Requirements pertaining to floor, wall, and ceiling surfaces, provided that the floor, wall, and ceiling surfaces of the kitchen, storage, and toilet areas are smooth, of durable construction, and easily cleanable with no limitations on the use of wood, tile, and other nonfiber floor surfaces ordinarily used in residential settings; and

(v) All prohibitions and limitations on the use of a kitchen in a private home as a microenterprise home kitchen operation, provided that food is not prepared in designated sleeping quarters. Open kitchens adjacent to living and sleeping areas, kitchens in efficiency, studio, and loft-style residences, and kitchens without doors at all points of ingress and egress may be used in microenterprise home kitchen operations.

NEW SECTION. **Sec.**  (1) The state department of health must develop a sample permit and form for permit applications. A microenterprise home kitchen operation must obtain a permit from the local health jurisdiction, on forms developed by the local health jurisdiction or state department of health. The local health jurisdiction may require a microenterprise home kitchen operation to renew its permit annually. All applications for permits and permit renewals must be made on forms developed by the local health jurisdiction or state department of health and be accompanied by an inspection fee as provided in section 4 of this act.

(2) As part of the application for a permit to operate as a microenterprise home kitchen operation, an applicant shall submit to the local health jurisdiction written standard operating procedures that include all of the following information:

(a) A menu stating the foods to be offered;

(b) All food types or products that will be handled;

(c) The proposed procedures and methods of food preparation and handling;

(d) A description of all food preparation surfaces, including how they will be cleaned and how often they will be cleaned;

(e) Procedures, methods, and schedules for cleaning utensils, equipment, and for the disposal of refuse;

(f) How food will be maintained at the required holding temperatures pending pickup by consumer or during delivery if delivered by the operator;

(g) Procedures for food storage, which must meet the requirement that all food be stored at least six inches off the floor and include how prepared food will be stored prior to sale or delivery;

(h) A description of packaging for food;

(i) When meat and dairy products will be purchased and stored, including for how long such products will be stored prior to use;

(j) Cooking temperatures and how temperatures for cooked foods will be measured;

(k) How the microenterprise home kitchen operation will prevent anyone other than the approved and trained food service handler from accessing the kitchen while foods are being prepared;

(l) A description of adequate refrigeration capacity as appropriate to the menu; and

(m) Days and times that the home kitchen may potentially be utilized as a microenterprise home kitchen operation. The listed days and times are provided only for informational purposes and are not binding on the permit holder's actual operations.

(3) A permit may, as appropriate, require additional refrigeration capacity that is available and readily installable for home consumers.

(4) The application for a permit is not required to include public water supply and sewage descriptions, and these systems are not required to be reviewed for permit approval.

(5) Operating plans must be made on forms developed by the local health jurisdiction and be accompanied by a review fee as provided in section 4 of this act.

(6) A microenterprise home kitchen operation permitted under this section must include a signed document attesting, by opting to become permitted, that the permitted microenterprise home kitchen operation expressly grants to the local health jurisdiction the right to enter the permitted area of the domestic residence housing the microenterprise home kitchen operation for the purposes of inspections pursuant to section 4 of this act. Nonemergency inspections may occur only during the normal business hours of the operation and with reasonable advance notice to the operation. Under ordinary circumstances, advance notice provided at least two business days prior is considered reasonable advance notice for purposes of this section.

(7) For purposes of permitting, the permitted area includes the home kitchen, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, outdoor cooking facilities, and refuse storage area. Food operations may not be conducted outside of the permitted areas.

(8)(a) The local enforcement agency shall issue a permit after an initial inspection and review of the microenterprise home kitchen operation's standard operating procedure have determined that the proposed microenterprise home kitchen operation and its method of operation comply with the requirements of this chapter.

(b) The local health jurisdiction may not require a microenterprise home kitchen operation to comply with food safety requirements that are different from, or in addition to, the requirements of this chapter.

(9) In addition to the provision of any information required by the local health jurisdiction on forms developed under subsection (1) of this section and the payment of all fees, an applicant for a permit or a permit renewal as a microenterprise home kitchen operation must also provide documentation that all individuals to be involved in the preparation of microenterprise home kitchen operation foods have secured a food and beverage service worker's permit under chapter 69.06 RCW.

(10) A permit, once issued, is nontransferable. A permit is valid only for the person and location specified by that permit and, unless suspended or revoked for cause, for the time period indicated.

(11) The permit, or an accurate copy thereof, must be retained by the operation on-site and displayed at all times the microenterprise home kitchen operation is in operation.

NEW SECTION. **Sec.**  (1) The permitted area of a microenterprise home kitchen operation must be inspected for basic hygiene by the local health jurisdiction before initial permitting under section 3 of this act and may, at the discretion of the local health jurisdiction, be inspected up to once per year after initial permitting. In addition, the local health jurisdiction may inspect the permitted area of a microenterprise home kitchen operation at any time in response to a foodborne outbreak or other public health emergency. The authority of a local health jurisdiction to inspect a microenterprise home kitchen operation includes the authority to inspect any records required to be kept under the provisions of this chapter. For any inspection, the local health jurisdiction shall document the reason for the inspection, shall maintain such documentation on file with the microenterprise home kitchen operation's permit, and shall provide the reason for the inspection in writing to the operator of the microenterprise home kitchen operation.

(2) When a local health jurisdiction conducts a basic hygiene inspection, the local health jurisdiction shall, at a minimum, inspect for the following:

(a) That the permitted microenterprise home kitchen operation understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparing, packaging, or handling of any microenterprise home kitchen operation food products or be in the home kitchen during the preparation, packaging, or handling of any microenterprise home kitchen operation food products;

(b) That no microenterprise home kitchen operation food preparation, packaging, or handling is occurring in the microenterprise home kitchen operation concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment, except that this subsection (2)(b) may not be construed so as to prohibit a microenterprise home kitchen operation from offering cooking classes within the home kitchen;

(c) That no infants, small children, or pets are in the microenterprise home kitchen operation during the preparation, packaging, or handling of any microenterprise home kitchen operation food products;

(d) That all food-contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any microenterprise home kitchen operation food products are washed, rinsed, and sanitized before each use;

(e) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(f) That all persons involved in the preparation and packaging of microenterprise home kitchen operation food products:

(i) Have obtained a food and beverage service worker's permit under chapter 69.06 RCW;

(ii) Are not preparing meals for sale in the home kitchen when ill with a communicable disease or condition;

(iii) Wash their hands before any food preparation and food packaging activities; and

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils.

(3) Nonemergency inspections may occur only during the normal business hours of the microenterprise home kitchen operation and with reasonable advance notice to the operation. Under ordinary circumstances, advance notice provided at least two business days prior is considered reasonable for purposes of this section.

(4) Should the local health jurisdiction be denied access to the permitted area of a domestic residence housing a microenterprise home kitchen operation where access was sought for the purposes of enforcing or administering this chapter, the local health jurisdiction may:

(a) Issue a closure notice to be posted on the premises in a conspicuous location during normal business hours of the operation for potential patrons and require that either the production or sale, or both, of food products cease immediately; and

(b) Apply to any court of competent jurisdiction for a search warrant authorizing access to the permitted area of a domestic residence housing a permitted microenterprise home kitchen operation, upon which the court may issue a search warrant for the purposes requested.

(5) The local health jurisdiction may charge a fee for issuing or renewing microenterprise home kitchen operations as authorized by RCW 70.05.060.

(6) Access provided under this section is limited to the permitted area of the microenterprise home kitchen operation, during the posted operating hours of the microenterprise home kitchen operation, and solely for the purpose of enforcing or administering this chapter.

NEW SECTION. **Sec.**  (1) When a local health jurisdictions determines that any person is engaging in a microenterprise home kitchen operation without a valid permit issued under section 3 of this act, or an operator of a microenterprise home kitchen operation is violating any provision of this chapter or any rule adopted under this chapter, the local health jurisdiction may impose penalties or conditions as provided in this section.

(2)(a) For the first violation within a two-year period, the local health jurisdiction must hold an administrative conference with the operator of the microenterprise home kitchen operation, which may include, as appropriate, an offer of technical assistance.

(b) For the second or subsequent violation within a two-year period, the local health jurisdiction may initiate one, or a combination of one or more, of the following compliance methods:

(i) A written warning;

(ii) Placing the microenterprise home kitchen operation on probation, which may include setting conditions for continued operation of the microenterprise home kitchen operation during the probation period and, if the individual is operating without a valid permit, an administrative fine;

(iii) Suspending the permit of the microenterprise home kitchen operation;

(iv) Revoking the permit of the microenterprise home kitchen operation; and

(v) Issuing fees to cover the cost of inspections prior to a microenterprise home kitchen operation preparing food after suspension or revocation.

(3) The operation of a microenterprise home kitchen operation cannot be used as legal grounds for eviction, unless specifically identified in a lease agreement.

NEW SECTION. **Sec.**  (1) If a local health jurisdiction seeks to deny, suspend, or revoke any permit provided for in this chapter, it may do so if, after conducting a hearing, it is determined that a permittee has committed any of the following acts:

(a) Refused, neglected, or failed to comply with the provision of this chapter, any rule adopted to administer this chapter, or any lawful order of the local health jurisdiction;

(b) Refused, neglected, or failed to keep and maintain records required by this chapter or to make the records available when requested pursuant to the provisions of this chapter;

(c) Consistent with section 4 of this act, refused the local health jurisdiction access to the permitted area of a domestic residence housing a microenterprise home kitchen operation for the purpose of carrying out the provisions of this chapter;

(d) Consistent with section 4 of this act, refused the local health jurisdiction access to any records required to be kept under the provisions of this chapter; or

(e) Exceeded the meal preparation limits provided in section 2 of this act.

(2) The local health jurisdiction may summarily suspend a permit issued under this chapter, whether or not the permittee has been found to have committed a prior violation, if the health officer or designee finds that a microenterprise home kitchen operation is operating under conditions that constitute an immediate danger to public health or if the local health jurisdiction is denied access to the permitted area of a domestic residence housing a microenterprise home kitchen operation and records where the access was sought for the purposes of enforcing or administering this chapter.

NEW SECTION. **Sec.**  Except as otherwise provided in this chapter, a microenterprise home kitchen operation with a valid permit under section 3 of this act is not subject to the provisions of chapter 69.07 RCW or to permitting and inspection by the department of agriculture.

NEW SECTION. **Sec.**  A new section is added to chapter 69.07 RCW to read as follows:

(1) This chapter does not apply to a microenterprise home kitchen operation with a valid permit under section 3 of this act.

(2) This section expires June 30, 2024.

NEW SECTION. **Sec.**  A new section is added to chapter 70.54 RCW to read as follows:

(1) The department of health shall compile and maintain, in a manner and format readily accessible by the public, statistics related to the number and distribution of microenterprise home kitchen operations permitted pursuant to section 3 of this act.

(2) This section expires June 30, 2024.

NEW SECTION. **Sec.**  In compliance with RCW 43.01.036 and by July 1, 2024, the state department of health must submit a report to the legislature reviewing the program adopted in this act and providing recommendations for necessary legislation regarding the program adopted in this act.

NEW SECTION. **Sec.**  Sections 1 through 7 and 12 of this act constitute a new chapter in Title 69 RCW.

NEW SECTION. **Sec.**  This chapter expires December 31, 2026.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2021, in the omnibus appropriations act, this act is null and void.

**--- END ---**