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HOUSE BILL 2777

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Frame, Peterson, Macri, Gregerson, Hudgins, Ramel, Fitzgibbon, Riccelli, J. Johnson, Senn, Doglio, Davis, Pettigrew, Pollet, and Slatter

Read first time 01/21/20. Referred to Committee on Local Government.

1 AN ACT Relating to the operation, authorization, and permitting  
2 of microenterprise home kitchens; reenacting and amending RCW  
3 43.20.025; adding new sections to chapter 43.20 RCW; adding a new  
4 section to chapter 69.07 RCW; adding a new section to chapter 70.54  
5 RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 43.20.025 and 2019 c 185 s 1 are each reenacted and  
8 amended to read as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Commissary" means an approved food establishment where food  
12 is stored, prepared, portioned, or packaged for service elsewhere.

13 (2) "Commissions" means the Washington state commission on  
14 African American affairs established in chapter 43.113 RCW, the  
15 Washington state commission on Asian Pacific American affairs  
16 established in chapter 43.117 RCW, the Washington state commission on  
17 Hispanic affairs established in chapter 43.115 RCW, and the  
18 governor's office of Indian affairs.

19 (3) "Consumer representative" means any person who is not an  
20 elected official, who has no fiduciary obligation to a health

1 facility or other health agency, and who has no material financial  
2 interest in the rendering of health services.

3 (4) "Council" means the governor's interagency coordinating  
4 council on health disparities, convened according to this chapter.

5 (5) "Department" means the department of health.

6 (6) "Health disparities" means the difference in incidence,  
7 prevalence, mortality, or burden of disease and other adverse health  
8 conditions, including lack of access to proven health care services  
9 that exists between specific population groups in Washington state.

10 (7) "Health impact review" means a review of a legislative or  
11 budgetary proposal completed according to the terms of this chapter  
12 that determines the extent to which the proposal improves or  
13 exacerbates health disparities.

14 (8) "Local health board" means a health board created pursuant to  
15 chapter 70.05, 70.08, or 70.46 RCW.

16 (9) "Local health officer" means the legally qualified physician  
17 appointed as a health officer pursuant to chapter 70.05, 70.08, or  
18 70.46 RCW.

19 (10) "Mobile food unit" means a readily movable food  
20 establishment.

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

27 (12) "Secretary" means the secretary of health, or the  
28 secretary's designee.

29 (13) "Servicing area" means an operating base location to which a  
30 mobile food unit or transportation vehicle returns regularly for such  
31 things as vehicle and equipment cleaning, discharging liquid or solid  
32 wastes, refilling water tanks and ice bins, and boarding food.

33 (14) "Social determinants of health" means those elements of  
34 social structure most closely shown to affect health and illness,  
35 including at a minimum, early learning, education, socioeconomic  
36 standing, safe housing, gender, incidence of violence, convenient and  
37 affordable access to safe opportunities for physical activity,  
38 healthy diet, and appropriate health care services.

39 (15) "State board" means the state board of health created under  
40 this chapter.

1 (16) (a) "Domestic residence" means a dwelling where one or more  
2 persons resides.

3 (b) "Domestic residence" does not include an outbuilding, shed,  
4 barn, or other similar structure that has not been permitted for  
5 residential occupancy.

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

10 (18) (a) "Microenterprise home kitchen operation" means a food  
11 facility that is operated by a person in the person's primary  
12 domestic residence where food is stored, handled, prepared for, and  
13 may be served to, consumers.

14 (b) "Microenterprise home kitchen operation" does not include a  
15 cottage food operation as defined in chapter 69.22 RCW.

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

19 NEW SECTION. Sec. 2. A new section is added to chapter 43.20  
20 RCW to read as follows:

21 (1) The state board shall adopt rules for the authorization,  
22 operation, and regulation of microenterprise home kitchen operations.  
23 The state board may delegate its rule-making authority under this  
24 section to the secretary and may rescind such delegated authority.

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

28 (a) The direct sale to consumers of food products to be consumed  
29 on the premises of the microenterprise home kitchen;

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

34 (c) Cooking classes, and similar educational experiences, that  
35 take place on the premises of the microenterprise home kitchen  
36 operation; and

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

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

4 (a) Food preparation may not involve processes that require a  
5 hazard analysis critical control point plan, as specified in WAC  
6 246-215-08210 as it existed on May 21, 2019, the production, service,  
7 or sale of raw milk or raw milk products, as identified in RCW  
8 15.36.012, or the service or sale of raw oysters;

9 (b) The operation may sell no more than thirty individual meals  
10 per day and no more than one hundred fifty individual meals per week;

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

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

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

17 (f) An internet food service intermediary must conspicuously post  
18 any fees associated with their digital network in high school  
19 equivalent English and Spanish, as well as whether they offer or  
20 provide liability insurance, and notify microenterprise home kitchen  
21 operators in writing thirty days in advance of any fee change  
22 exceeding a two percent increase.

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

25 (a) The restrictions provided in subsection (3) of this section;

26 (b) The application for and renewal of permits as provided in  
27 section 3 of this act;

28 (c) Inspections as provided in section 5 of this act;

29 (d) Sanitary procedures;

30 (e) Facility, equipment, and utensil requirements;

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

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

34 (h) Requirements for washing and other hygienic practices.

35 (5) Rules adopted pursuant to this section must specify that  
36 microenterprise home kitchen operations are exempt from the following  
37 provisions of the food service code, chapter 246-215 WAC, as it  
38 existed on May 21, 2019:

39 (a) Handwashing facilities requirements, provided that a sink  
40 with one or two large tubs placed next to it is used for washing,

1 rinsing, and sanitizing; and warm water, soap, and disposable paper  
2 towels are available and used in the identified primary toilet room  
3 and microenterprise home kitchen area by all persons working in the  
4 microenterprise home kitchen;

5 (b) Prohibitions on the presence of persons unnecessary to the  
6 food facility operation in the food preparation, food storage, or  
7 warewashing areas;

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

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

11 (e) Limitations on consumer access to the food facility through  
12 food preparation areas when not preparing food for sale;

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

19 (g) Limitations on outdoor display and sale of foods;

20 (h) Requirements to provide clean drinking cups and tableware for  
21 second portions and beverage refills;

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

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

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

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

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

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

- 1 (o) Requirements pertaining to the installation of fixed, floor-  
2 mounted, and table-mounted equipment;
- 3 (p) Dedicated laundry facility requirements, provided that linens  
4 used in connection with the microenterprise home kitchen operation  
5 must be laundered separately from the household and other laundry;
- 6 (q) Requirements pertaining to water, plumbing, drainage, and  
7 waste, provided that microenterprise home kitchen operations that  
8 have a private water supply have the supply tested at least sixty  
9 days prior to permitting and at least annually thereafter and  
10 demonstrate through a written record of testing that the water supply  
11 is potable;
- 12 (r) Any requirement that a microenterprise home kitchen operation  
13 have more than one toilet facility or that access to the toilet  
14 facility not require passage through the food preparation, food  
15 storage, or utensil washing areas;
- 16 (s) Light intensity, light source, and lightbulb requirements,  
17 provided that food preparation areas are well lighted by natural or  
18 artificial light whenever food is being prepared;
- 19 (t) Requirements to provide and use lockers, storage facilities,  
20 and designated dressing areas, and that food facility premises be  
21 free of litter and items that are unnecessary to the operation,  
22 provided that personal effects and clothing not ordinarily found in a  
23 home kitchen are placed or stored away from food preparation areas  
24 and dressing takes place outside of the kitchen;
- 25 (u) Limitations on the presence and handling of animals, such as  
26 domestic, service, or patrol animals, provided that a pet control  
27 plan that precludes pet entry or access to all areas of the  
28 microenterprise home kitchen operation during food cooking or  
29 preparation is in place;
- 30 (v) Requirements pertaining to floor, wall, and ceiling surfaces,  
31 provided that the floor, wall, and ceiling surfaces of the kitchen,  
32 storage, and toilet areas are smooth, of durable construction, and  
33 easily cleanable with no limitations on the use of wood, tile, and  
34 other nonfiber floor surfaces ordinarily used in residential  
35 settings;
- 36 (w) Any local evaluation or grading system for food facilities;  
37 and
- 38 (x) All prohibitions and limitations on the use of a kitchen in a  
39 private home as a food facility, provided that food is not prepared  
40 in designated sleeping quarters. Open kitchens adjacent to living and

1 sleeping areas, kitchens in efficiency, studio, and loft-style  
2 residences, and kitchens without doors at all points of ingress and  
3 egress may be used in microenterprise home kitchen operations.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.20  
5 RCW to read as follows:

6 (1) A microenterprise home kitchen operation must obtain a permit  
7 from the local health board on forms developed by the local health  
8 board. The local health board may require a microenterprise home  
9 kitchen operation to renew its permit annually. All applications for  
10 permits and permit renewals must be made on forms developed by the  
11 local health board and be accompanied by an inspection fee as  
12 provided in section 4 of this act.

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

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

18 (b) The proposed procedures and methods of food preparation and  
19 handling;

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

22 (d) How food will be maintained at the required holding  
23 temperatures pending pickup by consumer or during delivery if  
24 delivered by the operator; and

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

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

32 (4) A microenterprise home kitchen operation permitted under this  
33 section must include a signed document attesting, by opting to become  
34 permitted, that the permitted microenterprise home kitchen operator  
35 expressly grants to the local health board the right to enter the  
36 permitted area of the domestic residence housing the microenterprise  
37 home kitchen operation for the purposes of inspections pursuant to  
38 section 4 of this act. Nonemergency inspections may occur only during  
39 the normal business hours of the operation and with reasonable

1 advance notice to the operator. Under ordinary circumstances, forty-  
2 eight hours advance notice is considered reasonable for purposes of  
3 this section.

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

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

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

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

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

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

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.20  
31 RCW to read as follows:

32 (1) The permitted area of a microenterprise home kitchen  
33 operation must be inspected for basic hygiene by the local health  
34 board before initial permitting under section 3 of this act and may,  
35 at the discretion of the local health board, be inspected up to once  
36 per year after initial permitting. In addition, the local health  
37 board may inspect the permitted area of a microenterprise home  
38 kitchen operation, as defined in section 3 of this act, at any time  
39 in response to a foodborne outbreak or other public health emergency.



1 The authority of a local health board to inspect a microenterprise  
2 home kitchen operation includes the authority to inspect any records  
3 required to be kept under the provisions of this chapter. For any  
4 inspection, the local health board shall document the reason for the  
5 inspection, shall maintain such documentation on file with the  
6 microenterprise home kitchen operation's permit, and shall provide  
7 the reason for the inspection in writing to the operator of the  
8 microenterprise home kitchen operation.

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

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

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

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

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

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

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

37 (i) Have obtained a food and beverage service workers permit  
38 under chapter 69.06 RCW;

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

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

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

6 (3) Nonemergency inspections may occur only during the normal  
7 business hours of the microenterprise home kitchen operation and with  
8 reasonable advance notice to the operator. Under ordinary  
9 circumstances, forty-eight hours advance notice is considered  
10 reasonable for purposes of this section.

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

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

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

24 (5) The local health board may charge a fee for issuing or  
25 renewing microenterprise home kitchens as authorized by RCW  
26 70.05.060.

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

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.20  
33 RCW to read as follows:

34 The rights, remedies, and procedures respecting the  
35 administration of this chapter, including rule making, emergency  
36 actions, and permit suspension, revocation, or denial are governed by  
37 chapter 34.05 RCW.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 43.20  
2    RCW to read as follows:

3        (1) When a local health board determines that any person is  
4    engaging in a microenterprise home kitchen operation without a valid  
5    permit issued under section 3 of this act, or an operator of a  
6    microenterprise home kitchen operation is violating any provision of  
7    this chapter or any rule adopted under this chapter, the local health  
8    board may initiate one, or a combination of one or more, of the  
9    following compliance methods:

10        (a) Holding an administrative conference with the operator of the  
11    microenterprise home kitchen operation, which may include, as  
12    appropriate, the issuance of a warning and the offer of technical  
13    assistance;

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

19        (c) Suspending the permit of the microenterprise home kitchen  
20    operation;

21        (d) Revoking the permit of the microenterprise home kitchen  
22    operation; and

23        (e) Issue fees to cover the cost of inspections prior to an  
24    operation preparing food after suspension or revocation.

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

28        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 43.20  
29    RCW to read as follows:

30        (1) After conducting a hearing, the local health board may deny,  
31    suspend, or revoke any permit provided for in this chapter if it is  
32    determined that a permittee has committed any of the following acts:

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

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

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

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

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

10 (2) The local health board may summarily suspend a permit issued  
11 under this chapter if the health officer or designee finds that a  
12 microenterprise home kitchen operation is operating under conditions  
13 that constitute an immediate danger to public health or if the local  
14 health board is denied access to the permitted area of a domestic  
15 residence housing a microenterprise home kitchen operation and  
16 records where the access was sought for the purposes of enforcing or  
17 administering this chapter.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.20  
19 RCW to read as follows:

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

24 NEW SECTION. **Sec. 9.** A new section is added to chapter 69.07  
25 RCW to read as follows:

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

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.54  
29 RCW to read as follows:

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

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