

SENATE BILL REPORT

E2SHB 1258

As of March 23, 2021

Title: An act relating to the operation, authorization, and permitting of microenterprise home kitchens.

Brief Description: Concerning the operation, authorization, and permitting of microenterprise home kitchens.

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

Brief History: Passed House: 3/9/21, 58-38.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/23/21.

Brief Summary of Bill

- Requires the Department of Health to develop a pilot program, until December 31, 2026, to allow for the permitting of microenterprise home kitchen operations (MHKOs).
- Authorizes local health jurisdictions to permit up to 100 MHKOs the first year and up to an additional 200 during the second year, based on certain geographic limitations.
- Establishes requirements for permitting and inspection of MHKOs.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Food Service Standards. The United States Food and Drug Administration (FDA) provides guidance to state and local agencies regarding safe food service practices (Food Code). The FDA developed the Food Code in cooperation with the Centers for Disease Control and Prevention and the United States Department of Agriculture to provide current enforcement standards for safe food service practices.

The Washington State Board of Health (board) is authorized to establish minimum standards for prevention and control of food borne illnesses. Local jurisdictions may adopt more stringent standards. The board's rules direct food service establishments in the areas of food supplies, food protection, public health labeling, food preparation, temperature control, personal hygiene, garbage and litter, sanitary equipment, and pest control. The board considers the most recent version of the Food Code when adopting rules for food service.

Summary of Bill: The Department of Health (DOH) must develop and begin a pilot program (program) to allow permitting for microenterprise home kitchen operations (MHKOs). Beginning July 1, 2022, local health jurisdictions may permit up to 100 MHKOs in the first year and an additional 200 during the second year, based on certain limitations:

- a county with a population over 2,000,000 may issue up to 30 permits in the first year and up to 60 permits in the second year;
- a county with a population between 490,000 and 2,000,000 may issue up to 20 permits in the first year and up to 40 permits in the second year; and
- a county with a population less than 490,000 may issue up to 10 permits in the first year and up to 20 permits in the second year.

Local health jurisdictions may permit up to 200 additional MHKOs in each year thereafter. An MHKO may sell food products to be consumed at a location other than the premises of the MHKO, whether delivered directly to the consumer by the MHKO or by an intermediary, and cater a specific menu and amount of food which is prepared on the premises of the MHKO for service to a customer at a different location.

The board must adopt rules for the authorization, operation, and regulation of MHKOs by July 1, 2024. Rules adopted must provide for certain restrictions on MHKOs, including:

- food preparation may not involve certain processes or certain foods and food may not be held hot for more than two hours or held overnight;
- an MHKO may not sell more than 20 individual meals per day and no more than 100 meals per week;
- the MHKO may not engage in indirect sales to consumers and food from an MHKO may not be delivered out of state unless allowed in the state of delivery or by a third-party delivery service;
- an Internet food service intermediary must post any fees associated with their digital network, offer or provide liability insurance, and notify the MHKO about certain fee changes;

- the MHKO must be covered by a liability insurance policy; and
- the MHKO must post inspection scores at the entry of the operation during business hours and on any Internet page or Internet food service intermediary offering the operation's food for sale.

The rules adopted may also include requirements related to the application and renewal of permits; inspections; sanitary procedures; facility, equipment, and utensil requirements; labeling requirements; requirements for clean water sources and waste and wastewater disposal; and requirements for washing and other hygienic practices. MHKOs must follow the food service code, unless otherwise exempted and the rules adopted must exempt MHKOs from certain provisions of the food service code, including, but not limited to:

- certain handwashing facilities requirements;
- prohibitions on the presence of persons unnecessary to the MHKO in the permitted area;
- requirements pertaining to food-contact and nonfood-contact surfaces, including limitations of the use of wood as a food-contact surface, and requirements pertaining to floor, wall, and ceiling surfaces, and ventilation;
- requirements that cold or hot holding equipment used for potentially hazardous food be equipped with temperature measuring devices or product mimicking sensors;
- dedicated laundry facility requirements and any requirement that an MHKO have more than one toilet facility or that access to the toilet facility not require passage through the permitted area;
- requirements pertaining to water, plumbing, drainage, and waste, provided MHKOs 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 the water supply is potable, and provided MHKOs that have a private on-site sewage system have had the system inspected within one year prior to permitting; and
- limitations on the presence and handling of animals provided that a pet control plan that precludes pet entry or access to the permitted area.

DOH must develop a sample permit and form for permit applications. An MHKO must obtain a permit from the local health jurisdiction and a local health jurisdiction may require an MHKO to renew its permit annually. An MHKO must include in its standard operating plan certain information, such as:

- a menu stating the foods to be offered and information related to the types of food products, and the preparation, storage, handling, cooking, and packaging of the food products;
- information related to the food preparation area, cleaning of utensils and equipment and the permitted area, and disposal of refuse;
- when meat and dairy products will be purchased and stored and a description of adequate refrigeration capacity;
- how the MHKO will prevent anyone other than the approved and trained food service handler from accessing the kitchen while foods are being prepared; and

- information related to the days and times the home kitchen may be used for the MHKO.

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. The MHKO must provide documentation that all individuals involved in the preparation of MHKO's foods have a food and beverage service worker's permit. The application must be accompanied by a review fee and an inspection fee.

The local enforcement agency must issue a permit after an initial inspection and review of the MHKO's standard operating procedure and have determined the proposed MHKO and its method of operation comply with the requirements of the program. The local health jurisdiction may not require an MHKO to comply with food safety requirements that are different from, or in addition to, the requirements in the program. A permit is nontransferable and valid only for the applicant and the specific location. The permit must be displayed at all times the MHKO is in operation.

The MHKO must include a signed document attesting that the local health jurisdiction will be given access for inspection purposes. The MHKO must be inspected before initial permitting and may be inspected up to once per year after the initial permitting, and at any time in response to a food-borne outbreak or other public health emergency when the permit holder or permit holder's agent grants access, by appointment, or pursuant to a search warrant. The authority to inspect a MHKO includes the authority to inspect any records required to be kept by the MHKO. As part of the initial inspection, the local health jurisdiction must, at a minimum, determine that the MHKO meets the standards to be followed while preparing, handling, and storing food to be permitted under the program.

Nonemergency inspections may occur only when the permit holder or permit holder's agent is present and only during the normal business hours of operation with reasonable advance notice. The inspection must document the findings and those findings must be kept by the local health jurisdiction. If a local health jurisdiction is denied access to an MHKO, the local health jurisdiction may issue a closure notice or apply for a search warrant authorizing access to the MHKO.

An MHKO operating without a valid permit and any MHKO operating in violation of the rules and requirements of the program may be subject to penalties. For the first violation within a two-year period, the local health jurisdiction must hold an administrative conference with the MHKO. For the second or subsequent violation within a two-year period, the local health jurisdiction may issue a warning, place the MHKO on probation, issue a fine, suspend or revoke the permit, issue fees to cover the cost of inspection.

A local health jurisdiction may deny, suspend, or revoke a permit after conducting a hearing at which it is determined that the permittee has failed to comply with the rules or refused the local health jurisdiction access to a permitted area or records required to be kept. A local

health jurisdiction may also suspend or halt a permit issued if the health officer finds that an MHKO is operating under conditions constituting an immediate danger to public health.

DOH must submit a report to the Legislature reviewing the program and providing recommendations for legislation regarding the program by July 1, 2024. The program expires December 31, 2026.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The bill creates a pilot program for microenterprise home kitchens to prepare 20 meals per day or 100 meals a week which is about as much cooking as a large family would do in a week. The goal of this bill is to provide a pathway for folks who want to get into the food business to have a way to do so safely and legally. The bill contains exemptions to the food service code that are replaced with modified requirements that are science-based approaches to public health and food safety. This bill strikes a good balance to provide economic opportunity and safety for the public. Renting a commercial kitchen is very expensive and these costs have forced people to close their small business. This bill provides a great economic opportunity, allowing some businesses to stay small to supplement retirement. This bill can change the lives of refugees and immigrants allowing them to make ends meet by selling their food. Selling food from a home kitchen is happening without regulation currently and this bill will bring food safety to an industry not currently regulated. This bill brings people together as a community, puts people back to work, and will help people recover from the pandemic. This bill will allow entrepreneurs to save money while they solidify their meal offerings and build what could be a bigger business. This bill provides an economic opportunity for low income communities and folks who have lost work in the restaurant industry. This bill increases consumer safety because the licensing requirements and inspection criteria are vigorous. This bill will increase the use of resources from Washington farmers and help underserved individuals across the state.

CON: Public health is a crucial part of everyday life and this bill exempts certain food businesses from food safety requirements that have been established and implemented to protect public health. An emergency rule was adopted this interim to allow a restaurant with a liquor license to rent their kitchen space during nonoperating hours. There are concerns about allowing MHKOs to provide catering. This bill relaxes or suspends 22 requirements in the food service code and prevents the permitting agency from evaluating water supply and sewer systems of the MHKO which creates potential issues. Regulations such as time and temperature of foods and handwashing facility requirements are critical

standards in place to promote food safety and regulate potentially hazardous foods. There should be a term-limited pilot program under DOH that requires a risk-based analysis prior to permitting, which will help ensure MHKOs are adhering to key food safety standards.

OTHER: MHKOs are providing food to the public so they should be required to follow the food service code and be exempted as needed. The recommendation from an advisory committee in 2017 was to not allow MHKOs and focus on other solutions such as shared kitchens, creative food safety education, and public/private partnerships.

Persons Testifying: PRO: Representative Noel Frame, Prime Sponsor; Laurel Hargis; Alvin Salehi, Shef; Prashanthi Reddy, Makeda and Mingus; Will von Geldern, Ventures; Lisa Latendresse, Get Goodness; Chantel Jackson, Thyme Well Spent Catering; Sarah Schacht.

CON: Samantha Louderback, Washington Hospitality Association; Art Starry, Thurston County Health and Human Services; Kaitlyn Donahoe, Washington State Board of Health.

OTHER: Catherine Holm, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: No one.