
SUBSTITUTE HOUSE BILL 1258

State of Washington

67th Legislature

2021 Regular Session

By House Local Government (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)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to the operation, authorization, and permitting
2 of microenterprise home kitchens; adding a new section to chapter
3 69.07 RCW; adding a new section to chapter 70.54 RCW; adding a new
4 chapter to Title 69 RCW; creating a new section; and providing
5 expiration dates.

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

7 NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

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

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

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

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

19 (3) "Internet food service intermediary" means an entity that
20 facilitates the sale of home-cooked meals offered by a

1 microenterprise home kitchen operation through the entity's digital
2 network.

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 2.** (1) The state department of health shall
27 develop and begin a pilot program to allow for microenterprise home
28 kitchen operations. Starting July 1, 2022, the state department of
29 health is authorized to permit up to 100 microenterprise home kitchen
30 operations during the first year of the program, and up to 200
31 additional microenterprise home kitchen operations each year after
32 the first year. The permit must be issued by the state department of
33 health, in partnership with the local health jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) The restrictions provided in subsection (4) of this section;

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

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

12 (d) Sanitary procedures;

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

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

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

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

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

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

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

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

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

37 (e) Display guard, cover, and container requirements. However,
38 when food is left out uncovered on a kitchen counter or table due to
39 processing steps, such as cooling, active controls are in place to
40 prevent inadvertent contamination by children or pets. Active

1 controls may include presence of the permittee or an employee or use
2 of child or pet barriers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 3.** (1) A microenterprise home kitchen
30 operation must obtain a permit from the state department of health,
31 in partnership with the local health jurisdiction, on forms developed
32 by the local health jurisdiction. The local health jurisdiction may
33 require a microenterprise home kitchen operation to renew its permit
34 annually. All applications for permits and permit renewals must be
35 made on forms developed by the local health jurisdiction and be
36 accompanied by an inspection fee as provided in section 4 of this
37 act.

38 (2) As part of the application for a permit to operate as a
39 microenterprise home kitchen operation, an applicant shall submit to

1 the local health jurisdiction written standard operating procedures
2 that include all of the following information:

3 (a) A menu stating the foods to be offered;
4 (b) All food types or products that will be handled;
5 (c) The proposed procedures and methods of food preparation and
6 handling;

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

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

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

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

17 (h) A description of packaging for food;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 4.** (1) The permitted area of a
2 microenterprise home kitchen operation must be inspected for basic
3 hygiene by the local health jurisdiction before initial permitting
4 under section 3 of this act and may, at the discretion of the local
5 health jurisdiction, be inspected up to once per year after initial
6 permitting. In addition, the local health jurisdiction may inspect
7 the permitted area of a microenterprise home kitchen operation at any
8 time in response to a foodborne outbreak or other public health
9 emergency. The authority of a local health jurisdiction to inspect a
10 microenterprise home kitchen operation includes the authority to
11 inspect any records required to be kept under the provisions of this
12 chapter. For any inspection, the local health jurisdiction shall
13 document the reason for the inspection, shall maintain such
14 documentation on file with the microenterprise home kitchen
15 operation's permit, and shall provide the reason for the inspection
16 in writing to the operator of the microenterprise home kitchen
17 operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (5) The local health jurisdiction may charge a fee for issuing or
38 renewing microenterprise home kitchen operations as authorized by RCW
39 70.05.060.

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

6 NEW SECTION. **Sec. 5.** (1) When a local health jurisdictions
7 determines that any person is engaging in a microenterprise home
8 kitchen operation without a valid permit issued under section 3 of
9 this act, or an operator of a microenterprise home kitchen operation
10 is violating any provision of this chapter or any rule adopted under
11 this chapter, the local health jurisdiction may impose penalties or
12 conditions as provided in this section.

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

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

- 20 (i) A written warning;
- 21 (ii) Placing the microenterprise home kitchen operation on
22 probation, which may include setting conditions for continued
23 operation of the microenterprise home kitchen operation during the
24 probation period and, if the individual is operating without a valid
25 permit, an administrative fine;
- 26 (iii) Suspending the permit of the microenterprise home kitchen
27 operation;
- 28 (iv) Revoking the permit of the microenterprise home kitchen
29 operation; and
- 30 (v) Issuing fees to cover the cost of inspections prior to a
31 microenterprise home kitchen operation preparing food after
32 suspension or revocation.

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

36 NEW SECTION. **Sec. 6.** (1) If a local health jurisdiction seeks
37 to deny, suspend, or revoke any permit provided for in this chapter,

1 it may do so if, after conducting a hearing, it is determined that a
2 permittee has committed any of the following acts:

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

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

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

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

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

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

27 NEW SECTION. **Sec. 7.** Except as otherwise provided in this
28 chapter, a microenterprise home kitchen operation with a valid permit
29 under section 3 of this act is not subject to the provisions of
30 chapter 69.07 RCW or to permitting and inspection by the department
31 of agriculture.

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 69.07
33 RCW to read as follows:

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

36 (2) This section expires June 30, 2024.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.54
2 RCW to read as follows:

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

7 (2) This section expires June 30, 2024.

8 NEW SECTION. **Sec. 10.** In compliance with RCW 43.01.036 and by
9 July 1, 2024, the state department of health must submit a report to
10 the legislature reviewing the program adopted in this act and
11 providing recommendations for necessary legislation regarding the
12 program adopted in this act.

13 NEW SECTION. **Sec. 11.** Sections 1 through 7 and 12 of this act
14 constitute a new chapter in Title 69 RCW.

15 NEW SECTION. **Sec. 12.** This chapter expires December 31, 2026.

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