

HOUSE BILL REPORT

HB 1706

As Reported by House Committee On:
Local Government

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: Representatives Entenman, Chapman, Ramel, Jacobsen, Reed, Doglio, Thai, Ryu, Fitzgibbon, Bateman, Fey, Berry, Orwall, Callan, Robertson, Ormsby, Eslick, Duerr, Slatter and Macri.

Brief History:

Committee Activity:

Local Government: 2/14/23, 2/17/23 [DPS].

Brief Summary of Substitute Bill

- Establishes a Microenterprise Home Kitchen Operation Pilot Program and creates regulations and permitting standards for the program.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg and Riccelli.

Staff: Elizabeth Allison (786-7129).

Background:

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.

The Washington State Department of Health (Department) was formed in 1989 to promote and protect public health, monitor health care costs, maintain standards for quality health care delivery, and plan activities related to the health of Washington citizens. The Washington State Board of Health (Board) is an independent entity housed within the Department that establishes minimum standards for the prevention and control of foodborne 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 United States Food and Drug Administration's Food Code when adopting rules for food service.

The Washington State Retail Food Code (Food Code) provides safety standards for food served or sold to the public.

Summary of Substitute Bill:

The Department is directed to develop and begin a pilot program to allow for microenterprise home kitchen operations (MHKOs). Prior to issuing any permits in any county administering the pilot program, the Department must enter into a joint plan of responsibility with the local health jurisdiction (LHJ). Beginning July 1, 2024, LHJs may permit up to 200 MHKOs. Beginning one year after the pilot program begins, by June 30 of each year, the Department must submit a report to the Legislature reviewing the program and provide recommendations for necessary legislation regarding the program. The Department must compile and maintain publicly accessible statistics related to the number and distribution of MHKOs permitted.

"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. An MHKO may sell food products to be consumed at a location other than the premises of the MHKO.

Microenterprise home kitchen operations are subject to the Food Code, unless otherwise exempted by the Department, including the following limitations:

- Food preparation may not involve processes that require a hazard analysis critical control point plan; the production, service, or sale of raw milk or raw milk products; nonpasteurized juice; curing of meats; or the service or sale of raw oysters or other shellfish.
- The MHKO may sell no more than 20 individual meals per day and no more than 100 individual meals per week based on the capacity of the MHKO.
- The operation may not engage in indirect sales to consumers.
- Food products prepared in an MHKO may not be delivered outside of the state by the operator of the MHKO unless allowed in the state of delivery.

- Food produced in an MHKO may not be delivered by a third-party delivery service.
- An internet food service intermediary must conspicuously post any fees associated with their digital network, offer or provide liability insurance, and notify MHKO operators in writing 30 days in advance of any fee change exceeding a 2 percent increase.
- The MHKO is required to 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.
- Food produced in an MHKO may not be held hot for more than two hours, and may not be held overnight.

All MHKO permits expire June 30, 2027. Upon conclusion of the pilot program, the Board may, based on the Department's recommendation, adopt rules for the authorization, operation, and regulation of MHKOs.

The MHKO must post any inspection scores, grades, or other evaluation records required by the LHJ 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.

Additional requirements for an MHKO include the application for and renewal of permits; inspections; sanitary procedures; facility, equipment, and utensil requirements; labeling procedures; requirements for clean water sources and waste and wastewater disposal; and requirements for washing and other hygienic practices.

An MHKO must obtain a permit from the Department that may be required to be renewed annually. The application must include the MHKO's standard operating procedures such as food types that will be prepared, handling procedures, cleaning plans, refuse disposal processes, food storage, and days and times the MHKO may be operated.

The MHKO must be inspected before initial permitting and may be inspected up to twice per year after the initial permitting. The permit holder must make themselves available for routine inspection or in response to a foodborne outbreak or other public health emergency. 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, by appointment, or pursuant to a search warrant. Absent a search warrant, the local health inspector may not enter a home when only minors are present. The inspection protocol includes basic standards the MHKO must follow while preparing, handling, or storing food in the MHKO.

An MHKO operating without a valid permit and any MHKO operating in violation of any of the requirements may be subject to sanctions. For the first violation within a two-year period, the LHJ must hold an administrative conference with the operator of the MHKO, which may include an offer of technical assistance. For the second or subsequent violation

within a two-year period, the LHJ may issue a warning, place the MHKO on probation, issue a fine, suspend or revoke the permit, issue fees to cover the cost of an inspection prior to the MHKO preparing food after suspension or revocation, or a combination of those sanctions.

The Department 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 LHJ access to a permitted area or records required to be kept. The Department may also suspend or halt a permit issued if the health inspector finds that an MHKO is operating under conditions constituting an immediate danger to public health.

The obligation of local governments to comply with certain requirements of the act is contingent on the provision of state funding for the specific purpose of complying with those requirements.

Substitute Bill Compared to Original Bill:

The substitute bill requires the Department to assess the possible adoption of rules for MHKOs. The Department must enter into a joint plan of responsibility with an LHJ before issuing permits in the county in which the LHJ is located, and may permit up to 200 MHKOs during the pilot program based on the capacity of the MHKO. Up to 75 permits may be issued per county. Population requirements for counties to participate are removed. The authorization for MHKOs to engage in catering activities is removed, and MHKOs are prohibited from offering nonpasteurized juice. The MHKOs are subject to the Food Code unless otherwise exempted by the Department. The requirement that the Department create a sample permit and permit application is removed. The Department must maintain data on existing commissary, shared, or commercial kitchen facilities for rent. Any MHKOs permitted in a rental property must provide an attestation that operating a business does not violate the rental agreement. An MHKO may be inspected up to twice a year after initial permitting instead of once per year. All MHKO permit-holders must make themselves available for routine inspections or in response to a foodborne outbreak or other public health emergency. The authorization for LHJs to charge a permit fee is removed. The Department and the LHJs may issue penalties consistent with violations of the Food Code against a person operating without a valid permit. The provision that MHKOs cannot be used as legal grounds for an eviction is removed. The annual report submitted to the Legislature by the Department must begin one year after the pilot program begins.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 19, 2023.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will allow small, one-person entities to become independent through preparing food in their homes, under regulation, for sale to the public. Although commercial kitchens are available to rent, many small entrepreneurs don't have access due to financial barriers. Many people are already selling food without certifications or regulation, and they would like to sell food legally and ethically. Venture companies offer accessible loans and play a critical role for small businesses. The bill would support the smallest and most vulnerable businesses and address equity issues. It would allow them to move to legal operations with a license to operate in their homes. MHKOs offer people the opportunity to use an asset they already have, which is their homes, without the outside expense of a commercial kitchen. This program has been successfully implemented in California. A review of the public health data from that program did not show any relation between these operations and foodborne illnesses. Commercial kitchens are not an option for all food businesses. Commercial kitchens do not have popcorn equipment and such equipment may not be brought in. Additionally, leasing commercial space is just not attainable for a small business to start out it because the space is too large and it is not within the budget. This bill is important to moving small businesses forward.

(Opposed) Food preparation needs to be done safely while still allowing entrepreneurs to earn money. There is untapped opportunity to support low-income cooks and those traditionally underrepresented and underserved, but customers must also be protected. There needs to be additional time to explore other ideas. The bill makes allowances for MHKOs that would not be permitted for other entities such as grocers. The Food Code is scientifically based and prevents cross-contamination. MHKOs should not be exempt from the Food Code. Instead, barriers to becoming commercial food businesses should be reduced. The bill gives a blanket exemption to 22 important food preparation requirements and allows them to serve food to the public. This bill is not the only or best path to support these enterprises. MHKOs are currently operating, and the Department is being asked to regulate and inspect these kitchens. Changes to this bill were negotiated in 2021 and it is disappointing that none of those changes were included in this version. The pilot program established in the bill is not a true pilot program. There is no end date at which to evaluate the program. It needs to be a true pilot program with a risk-based analysis to show that it can be effective before fully authorizing the program. There are also risks to rental units that will be used as MHKOs, and this poses a risk to the property owner and neighbors. Risks include flooding, fire, odors, pests, garbage, and increased traffic in residential areas. From an equity standpoint, there is also concern about the government having access to private homes. Members of the immigrant community are concerned about the government visiting homes and residences unannounced. Each operator is different and safety cannot be guaranteed across the board.

Persons Testifying: (In support) Representative Debra Entenman, prime sponsor; Erin Williamson, Ventures; Natalie Eltahir, Popcorn Vegan; Shirah Clark, Dusty Apron Bakery; Veronique Facchinelli, Casa Latina; and Brooke Davies, Washington Community

Investment Coalition.

(Opposed) Samantha Louderback, Washington Hospitality Association; Katie Beeson, Washington Food Industry Association; Jaime Bodden, Christina Sherman, and Nicole Thomsen, Washington State Association of Local Public Health Officials; and Todd Phillips, Washington State Department of Health.

Persons Signed In To Testify But Not Testifying: None.