

HOUSE BILL REPORT

HB 2777

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

Brief History:

Committee Activity:

Local Government: 2/4/20, 2/7/20 [DPS].

Brief Summary of Substitute Bill

- Authorizes microenterprise home kitchen operations and creates regulations and licensing standards for such ventures.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Pollet, Chair; Duerr, Vice Chair; Griffey, Assistant Ranking Minority Member; Appleton, Goehner and Senn.

Minority Report: Do not pass. Signed by 1 member: Representative Kraft, Ranking Minority Member.

Staff: Robbi Kesler (786-7153).

Background:

The Washington State Board of Health (Board) establishes minimum standards for the 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,

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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.

Summary of Substitute Bill:

A microenterprise home kitchen operation (MHKO) pilot program is created. The pilot program may permit up to 50 MHKOs in the first year and may permit up to 100 additional MHKOs in each year thereafter. The Department of Health (Department) must complete required rulemaking by July 1, 2022. The Department must submit a report to the Legislature reviewing the program and provide recommendations for necessary legislation by December 10, 2021.

"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, prepared for, and may be served to, consumers. A 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 microenterprise home kitchen 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.

Restrictions on the MHKOs include:

- 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, or the service or sale of raw oysters;
- the MHKO may sell no more than 30 individual meals per day and no more than 150 individual meals per week;
- the MHKO may not exceed a gross annual revenue of \$80,000;
- the MHKO may not engage in indirect sales to consumers;
- food products prepared in a 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 a 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, as well as a notice whether they offer or provide liability insurance, and notify MHKO operators in writing 30 days in advance of any fee change exceeding a 2 percent increase; and
- the MHKO is required to be covered by a liability insurance policy, in an amount not less than \$500,000, which may be adjusted by the Board or Department to reflect inflation, that would cover any incidents arising from the sale or consumption of food, including protection for consumers for injuries arising from a foodborne illness.

Additional requirements that may be required for a MHKO include inspections, sanitary procedures, facility, equipment, utensil requirements, labeling procedures, requirements for clean water sources and waste and wastewater disposal, and requirements for washing and

other hygienic practices. The MHKOs are exempt from a number of provisions in the food services code and modified requirements are provided.

A MHKO must obtain a permit from the Board, in cooperation with the local health jurisdiction, and 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 application must be accompanied by an inspection fee. 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 foodborne outbreak or other public health emergency. The inspection must document the findings and those findings must be kept by the local health jurisdiction. The inspection protocol includes basic standards the MHKO must follow while preparing, handling, or storing food in the MHKO.

A MHKO operating without a valid permit and any MHKO operating in violation of any of the requirements may be issued a warning, be placed on probation, be fined, or have their permit suspended or revoked.

Substitute Bill Compared to Original Bill:

The substitute bill creates a MHKO pilot program and adds an expiration date of June 30, 2022. A MHKO may not offer on-site dining or cooking classes. A MHKO located in a residence with a private septic system is required to show proof of inspection within the prior year. A MHKO is not exempt from evaluation and findings under the local health board's grading systems must be posted if the local health jurisdiction's regulation require posting. Instead of 48 hours, notice of inspection should be given at least two business days in advance.

A MHKO is required to be covered by a liability insurance policy, in an amount not less than \$500,000, which may be adjusted by the Board or Department to reflect inflation, that would cover any incidents arising from the sale or consumption of food, including protection for consumers for injuries arising from a foodborne illness.

To qualify as a MHKO, the business may not have an annual gross revenue above \$80,000.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 4, 2020.

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 is balanced in an effort to give small businesses an opportunity to get started. Currently, there are people that do this under the radar and without regulation; this would bring them in and make them a bona fide business that pays taxes, is licensed, and abides by food safety guidelines. A pilot program is a small step forward, while giving everyone the opportunity to evaluate and react, which may allow future legislation to make it permanent. Brick and mortar restaurants and commercial kitchens are expensive and hard to find. This allows people to get in and start their business at an appropriate scale in order to ensure future success.

(Opposed) There should be a focus on removing barriers to restaurant startups, instead of decreasing health safety regulations. One option that could help startups would be to change certain commercial kitchen regulations and allow current restaurants to offer space for rent when not in use. Food safety is a public concern and rules should be similar to all businesses in the food industry. Allowing these businesses may increase the cost of permits for all food businesses.

(Other) Liability insurance should be required; most consumers can't afford the cost of exposure to foodborne illnesses. There is concern related to the effect of a fire or illness outbreak on homeowner insurance. There are technical issues that need to be resolved, including proper reference and delegation to the Department rather than the Board. A pilot program would be preferred in order to allow time to determine the best structure to put in place for a permanent program.

Persons Testifying: (In support) Representative Frame, prime sponsor; Christian Morales, Ventures; Logan Niles, Pot Pie Factory; Chantel Jackson; Lillian Ryland; and Laurel Hargis.

(Opposed) Samantha Louderback, Washington Hospitality Association; and Catherine Holm, Washington Food Industry Association.

(Other) Will Von Geldern, Ventures; Joe Laxon, Washington State Department of Health; Jaime Bodden, Washington State Association of Local Public Health Officials; Sarah Schacht; and Michelle Davis, Washington State Board of Health.

Persons Signed In To Testify But Not Testifying: None.