
SUBSTITUTE HOUSE BILL 2777

State of Washington

66th Legislature

2020 Regular Session

By House Local Government (originally sponsored by Representatives Frame, Peterson, Macri, Gregerson, Hudgins, Ramel, Fitzgibbon, Riccelli, J. Johnson, Senn, Doglio, Davis, Pettigrew, Pollet, and Slatter)

READ FIRST TIME 02/07/20.

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; creating a new section; prescribing penalties; and providing an
6 expiration date.

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

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

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

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

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

20 (3) "Consumer representative" means any person who is not an
21 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, and prepared for
13 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 develop and begin a pilot program to
22 allow for microenterprise home kitchen operations. The state board is
23 authorized to permit up to fifty microenterprise home kitchen
24 operations during the first year of the program, and up to one
25 hundred additional microenterprise home kitchen operations each year
26 after the first year. The permit must be issued by the state board,
27 in partnership with the local health jurisdiction.

28 (2) The state board shall adopt rules for the authorization,
29 operation, and regulation of microenterprise home kitchen operations
30 by July 1, 2022. The state board may delegate its rule-making
31 authority under this section to the secretary and may rescind such
32 delegated authority.

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

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

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

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

7 (a) Food preparation may not involve processes that require a
8 hazard analysis critical control point plan, as specified in WAC
9 246-215-08210 as it existed on May 21, 2019, the production, service,
10 or sale of raw milk or raw milk products, as identified in RCW
11 15.36.012, or the service or sale of raw oysters;

12 (b) The operation may sell no more than thirty individual meals
13 or meal equivalent portions per day and no more than one hundred
14 fifty individual meals or meal equivalent portions per week;

15 (c) The operation has no more than eighty thousand dollars in
16 gross annual sales;

17 (d) The operation may not engage in indirect sales to consumers;

18 (e) Food products prepared in a microenterprise home kitchen may
19 not be delivered outside of the state by the operator of the
20 microenterprise home kitchen unless allowed in the state of delivery;

21 (f) Food produced in a microenterprise home kitchen operation may
22 not be delivered by a third-party delivery service;

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

29 (h) The operation must be covered by a liability insurance
30 policy, in an amount not less than five hundred thousand dollars,
31 which may be adjusted by the state board or department to reflect
32 inflation, that would cover any incidents arising from the sale or
33 consumption of food, including protection for consumers for injuries
34 arising from a foodborne illness; and

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

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

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

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

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

7 (d) Sanitary procedures;

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

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

10 (g) Requirements for clean water sources and waste and wastewater
11 disposal; and

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

13 (6) Rules adopted pursuant to this section must specify that
14 microenterprise home kitchen operations are exempt from the following
15 provisions of the food service code, chapter 246-215 WAC, as it
16 existed on May 21, 2019:

17 (a) Handwashing facilities requirements, provided that a sink
18 with one or two large tubs placed next to it is used for washing,
19 rinsing, and sanitizing; and warm water, soap, and disposable paper
20 towels are available and used in the identified primary toilet room
21 and microenterprise home kitchen area by all persons working in the
22 microenterprise home kitchen;

23 (b) Prohibitions on the presence of persons unnecessary to the
24 food facility operation in the food preparation, food storage, or
25 warewashing areas;

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

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

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

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

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

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

1 (i) Requirements pertaining to the characteristics and
2 certification of utensils and equipment, provided that the utensils
3 and equipment are designed to retain their characteristic qualities
4 under normal use conditions;

5 (j) Requirements pertaining to the characteristics, construction,
6 and multiuse of food-contact and nonfood-contact surfaces, provided
7 that food contact surfaces are smooth, easily cleanable, and in good
8 repair;

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

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

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

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

19 (o) Requirements pertaining to the installation of fixed, floor-
20 mounted, and table-mounted equipment;

21 (p) Dedicated laundry facility requirements, provided that linens
22 used in connection with the microenterprise home kitchen operation
23 must be laundered separately from the household and other laundry;

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

32 (r) Any requirement that a microenterprise home kitchen operation
33 have more than one toilet facility or that access to the toilet
34 facility not require passage through the food preparation, food
35 storage, or utensil washing areas;

36 (s) Light intensity, light source, and lightbulb requirements,
37 provided that food preparation areas are well lighted by natural or
38 artificial light whenever food is being prepared;

39 (t) Requirements to provide and use lockers, storage facilities,
40 and designated dressing areas, and that food facility premises be

1 free of litter and items that are unnecessary to the operation,
2 provided that personal effects and clothing not ordinarily found in a
3 home kitchen are placed or stored away from food preparation areas
4 and dressing takes place outside of the kitchen;

5 (u) Limitations on the presence and handling of animals, such as
6 domestic, service, or patrol animals, provided that a pet control
7 plan that precludes pet entry or access to all areas of the
8 microenterprise home kitchen operation during food cooking or
9 preparation is in place;

10 (v) Requirements pertaining to floor, wall, and ceiling surfaces,
11 provided that the floor, wall, and ceiling surfaces of the kitchen,
12 storage, and toilet areas are smooth, of durable construction, and
13 easily cleanable with no limitations on the use of wood, tile, and
14 other nonfiber floor surfaces ordinarily used in residential
15 settings; and

16 (w) All prohibitions and limitations on the use of a kitchen in a
17 private home as a food facility, provided that food is not prepared
18 in designated sleeping quarters. Open kitchens adjacent to living and
19 sleeping areas, kitchens in efficiency, studio, and loft-style
20 residences, and kitchens without doors at all points of ingress and
21 egress may be used in microenterprise home kitchen operations.

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

24 (1) A microenterprise home kitchen operation must obtain a permit
25 from the state department of health, in partnership with the local
26 health jurisdiction, on forms developed by the local health
27 jurisdiction. The local health jurisdiction may require a
28 microenterprise home kitchen operation to renew its permit annually.
29 All applications for permits and permit renewals must be made on
30 forms developed by the local health jurisdiction and be accompanied
31 by an inspection fee as provided in section 4 of this act.

32 (2) As part of the application for a permit to operate as a
33 microenterprise home kitchen operation, an applicant shall submit to
34 the local health jurisdiction written standard operating procedures
35 that include all of the following information:

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

37 (b) The proposed procedures and methods of food preparation and
38 handling;

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

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

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

10 (3) Operating plans must be made on forms developed by the local
11 health jurisdiction and be accompanied by a review fee as provided in
12 section 4 of this act.

13 (4) A microenterprise home kitchen operation permitted under this
14 section must include a signed document attesting, by opting to become
15 permitted, that the permitted microenterprise home kitchen operator
16 expressly grants to the local health jurisdiction the right to enter
17 the permitted area of the domestic residence housing the
18 microenterprise home kitchen operation for the purposes of
19 inspections pursuant to section 4 of this act. Nonemergency
20 inspections may occur only during the normal business hours of the
21 operation and with reasonable advance notice to the operator. Under
22 ordinary circumstances, advance notice provided at least two business
23 days prior is considered to be reasonable advance notice for purposes
24 of this section.

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

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

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

39 (7) In addition to the provision of any information required by
40 the local health jurisdiction on forms developed under subsection (1)

1 of this section and the payment of all fees, an applicant for a
2 permit or a permit renewal as a microenterprise home kitchen
3 operation must also provide documentation that all individuals to be
4 involved in the preparation of microenterprise home kitchen foods
5 have secured a food and beverage service worker's permit under
6 chapter 69.06 RCW.

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

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

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

15 (1) The permitted area of a microenterprise home kitchen
16 operation must be inspected for basic hygiene by the local health
17 jurisdiction before initial permitting under section 3 of this act
18 and may, at the discretion of the local health jurisdiction, be
19 inspected up to once per year after initial permitting. In addition,
20 the local health jurisdiction may inspect the permitted area of a
21 microenterprise home kitchen operation, as defined in section 3 of
22 this act, at any time in response to a foodborne outbreak or other
23 public health emergency. The authority of a local health jurisdiction
24 to inspect a microenterprise home kitchen operation includes the
25 authority to inspect any records required to be kept under the
26 provisions of this chapter. For any inspection, the local health
27 jurisdiction shall document the reason for the inspection, shall
28 maintain such documentation on file with the microenterprise home
29 kitchen operation's permit, and shall provide the reason for the
30 inspection in writing to the operator of the microenterprise home
31 kitchen operation.

32 (2) When a local health jurisdiction conducts a basic hygiene
33 inspection, the local health jurisdiction shall, at a minimum,
34 inspect for the following:

35 (a) That the permitted microenterprise home kitchen operator
36 understands that no person other than the permittee, or a person
37 under the direct supervision of the permittee, may be engaged in the
38 processing, preparing, packaging, or handling of any microenterprise
39 home kitchen food products or be in the home kitchen during the

1 preparation, packaging, or handling of any microenterprise home
2 kitchen food products;

3 (b) That no microenterprise home kitchen food preparation,
4 packaging, or handling is occurring in the microenterprise home
5 kitchen concurrent with any other domestic activities such as family
6 meal preparation, dishwashing, clothes washing or ironing, kitchen
7 cleaning, or guest entertainment, except that this subsection (2)(b)
8 may not be construed so as to prohibit a microenterprise home kitchen
9 operation from offering cooking classes within the home kitchen;

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

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

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

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

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

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

25 (iii) Wash their hands before any food preparation and food
26 packaging activities; and

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

30 (3) Nonemergency inspections may occur only during the normal
31 business hours of the microenterprise home kitchen operation and with
32 reasonable advance notice to the operator. Under ordinary
33 circumstances, advance notice provided at least two business days
34 prior is considered reasonable for purposes of this section.

35 (4) Should the local health jurisdiction be denied access to the
36 permitted area of a domestic residence housing a microenterprise home
37 kitchen operation where access was sought for the purposes of
38 enforcing or administering this chapter, the local health
39 jurisdiction may:

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

5 (b) Apply to any court of competent jurisdiction for a search
6 warrant authorizing access to the permitted area of a domestic
7 residence housing a permitted microenterprise home kitchen operation,
8 upon which the court may issue a search warrant for the purposes
9 requested.

10 (5) The local health jurisdiction may charge a fee for issuing or
11 renewing microenterprise home kitchens as authorized by RCW
12 70.05.060.

13 (6) Access provided under this section is limited to the
14 permitted area of the microenterprise home kitchen operation, during
15 the posted operating hours of the microenterprise home kitchen
16 operation, and solely for the purpose of enforcing or administering
17 this chapter.

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

20 The rights, remedies, and procedures respecting the
21 administration of this chapter, including rule making, emergency
22 actions, and permit suspension, revocation, or denial are governed by
23 chapter 34.05 RCW.

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

26 (1) When a local health jurisdiction determines that any person
27 is engaging in a microenterprise home kitchen operation without a
28 valid permit issued under section 3 of this act, or an operator of a
29 microenterprise home kitchen operation is violating any provision of
30 this chapter or any rule adopted under this chapter, the local health
31 jurisdiction may initiate one, or a combination of one or more, of
32 the following compliance methods:

33 (a) Holding an administrative conference with the operator of the
34 microenterprise home kitchen operation, which may include, as
35 appropriate, the issuance of a warning and the offer of technical
36 assistance;

37 (b) Placing the microenterprise home kitchen operation on
38 probation, which may include setting conditions for continued

1 operation of the microenterprise home kitchen operation during the
2 probation period and, if the individual is operating without a valid
3 permit, an administrative fine;

4 (c) Suspending the permit of the microenterprise home kitchen
5 operation;

6 (d) Revoking the permit of the microenterprise home kitchen
7 operation; and

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

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

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

15 (1) After conducting a hearing, the local health jurisdiction may
16 deny, suspend, or revoke any permit provided for in this chapter if
17 it is determined that a permittee has committed any of the following
18 acts:

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

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

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

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

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

34 (2) The local health jurisdiction may summarily suspend a permit
35 issued under this chapter if the health officer or designee finds
36 that a microenterprise home kitchen operation is operating under
37 conditions that constitute an immediate danger to public health or if
38 the local health jurisdiction is denied access to the permitted area
39 of a domestic residence housing a microenterprise home kitchen

1 operation and records where the access was sought for the purposes of
2 enforcing or administering this chapter.

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

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

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

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

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

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

19 NEW SECTION. **Sec. 11.** In compliance with RCW 43.01.036 and by
20 December 10, 2021, the state department of health must submit a
21 report to the legislature reviewing the program adopted in this act
22 and providing recommendations for necessary legislation regarding the
23 program adopted in this act.

24 NEW SECTION. **Sec. 12.** This act expires June 30, 2023.

--- END ---