

E2SHB 1258 - S COMM AMD

By Committee on Agriculture, Water, Natural Resources & Parks

NOT CONSIDERED 04/26/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature recognizes the
4 economic hardship caused by the COVID-19 pandemic.

5 (2) The legislature recognizes there are existing barriers in
6 access to the food and hospitality industry that disproportionately
7 impact black, indigenous, and immigrant, low income, and communities
8 of color.

9 (3) It is the intent of the legislature to establish a pilot
10 program to determine whether microenterprise home kitchen operations
11 are a suitable model to reduce inequities in the food and hospitality
12 industry, maintain public health principles, and vitalize the local
13 food economy.

14 (4) The microenterprise home kitchen operation pilot program is
15 intended to support economic opportunity and serve as a successful
16 transition to the use of commissary, shared, and commercial kitchens
17 and permitted food establishments.

18 NEW SECTION. **Sec. 2.** The definitions in this section apply
19 throughout this chapter unless the context clearly requires
20 otherwise.

21 (1) "Department" means the state department of health.

22 (2) "Domestic residence" means a single-family dwelling or an
23 area within a rental unit where a single person or family actually
24 resides. "Domestic residence" does not include:

25 (a) A group or communal residential setting within any type of
26 structure; or

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

28 (3) "Home kitchen" means a kitchen primarily intended for use by
29 the residents of a home.

30 (4) "Internet food service intermediary" means an entity that
31 facilitates the sale of home-cooked meals offered by a

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

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

7 (b) "Microenterprise home kitchen operation" is designed to be
8 temporary in nature and expires June 30, 2025, at which time the
9 microenterprise home kitchen operation must cease to operate or must
10 transition to a food establishment that uses a commissary, shared, or
11 commercial kitchen permitted by a local health jurisdiction and as
12 defined in chapter 246-215 WAC.

13 (c) "Microenterprise home kitchen operation" does not include a
14 cottage food operation as defined in chapter 69.22 RCW.

15 (6) "Operating plan" means the operating plan submitted by the
16 microenterprise home kitchen operation pursuant to section 4 of this
17 act.

18 (7) "Permit" means the document issued by the regulatory
19 authority that authorizes a person to operate a food establishment.

20 (8) "Permit holder" means the entity that:

21 (a) Is legally responsible for the operation of the
22 microenterprise home kitchen operation such as the owner, the owner's
23 agent, or other person; and

24 (b) When required, possesses a valid permit to operate a
25 microenterprise home kitchen operation.

26 (9) "Permitted area" means the portion of a domestic residence
27 housing a home kitchen where the preparation, packaging, storage, or
28 handling of food products for the microenterprise home kitchen
29 operation occurs.

30 (10) "Regulatory authority" means the local, state, or federal
31 enforcement body or authorized representative having jurisdiction
32 over the food establishment. The local board of health, acting
33 through the local health officer, is the regulatory authority for the
34 activity of a food establishment, except as otherwise provided by
35 law.

36 (11) "State board" means the state board of health.

37 (12) "Third-party delivery service" means an outsourced entity
38 that provides delivery logistics of purchased meals from vendor to
39 consumer.

1 NEW SECTION. **Sec. 3.** (1) The department shall develop and begin

2 a pilot program to allow for microenterprise home kitchen operations.

3 (a) Prior to issuing permits in any county, the department must
4 enter into a joint plan of responsibility with a local health
5 jurisdiction to administer the pilot program. When establishing the
6 joint plan of responsibility, a local health jurisdiction may elect
7 to administer the program as long as it adheres to department
8 procedures, forms, and implementation guidelines.

9 (b) No later than July 1, 2022, the department is authorized to
10 permit and inspect up to 200 microenterprise home kitchen operations
11 during the pilot program. The department may issue no more than 75
12 permits in a single county.

13 (2) Microenterprise home kitchen operations may engage in the
14 direct sale of food to consumers for consumption at a location other
15 than the premises of the microenterprise home kitchen operation.

16 (3) Microenterprise home kitchen operations are subject to
17 chapter 246-215 WAC, including but not limited to the following
18 restrictions:

19 (a) Food preparation may not involve processes that require a
20 hazard analysis critical control point plan from the department, the
21 production, service, or sale of raw milk or raw milk products, as
22 identified in RCW 15.36.012, nonpasteurized juice, curing of meats,
23 or the service or sale of raw oysters or other shellfish;

24 (b) The operation may sell no more than 20 individual meals or
25 meal equivalent portions per day and no more than 100 individual
26 meals or meal equivalent portions per week based on the capacity of
27 the microenterprise home kitchen operation;

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

29 (d) Food products prepared in a microenterprise home kitchen
30 operation may not be delivered outside of the state by the operator
31 of the microenterprise home kitchen operation unless allowed in the
32 state of delivery;

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

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

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

6 (h) The microenterprise home kitchen operation must post any
7 inspection scores, grades, or other evaluation records required by
8 the department at the entry of the operation during business hours
9 and on any internet page or internet food service intermediary that
10 is offering the operation's food for sale;

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

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

16 (4) Microenterprise home kitchen operations must follow the
17 requirements of the current food service code in chapter 246-215 WAC,
18 unless otherwise exempted by the department upon conducting a risk-
19 based plan review pursuant to section 4 of this act.

20 (5) Upon conclusion of the pilot program, the state board may,
21 based on the department's recommendation, adopt rules for the
22 authorization, operation, and regulation of microenterprise home
23 kitchen operations.

24 NEW SECTION. **Sec. 4.** (1) The department must develop a permit
25 and form for permit applications, a form for operating plans, and
26 policies and procedures for the microenterprise home kitchen
27 operation pilot program. Microenterprise home kitchen operation pilot
28 program policies and procedures must be developed in consultation
29 with food safety and microenterprise home kitchen operation
30 advocates.

31 (2) A microenterprise home kitchen operation must obtain a permit
32 from the department.

33 (3) The microenterprise home kitchen operation's permit must be
34 renewed annually.

35 (a) Permit renewal must include a plan to transition to a
36 commissary, shared, or commercial kitchen permitted by a local health
37 jurisdiction and as defined in chapter 246-215 WAC.

38 (b) The department must maintain data on existing commissary,
39 shared, or commercial kitchen facilities available for rent. Local

1 health jurisdictions will work to inventory, permit, and inspect
2 commissary, shared, or commercial kitchen facilities.

3 (4) All microenterprise home kitchen operation permits expire
4 June 30, 2025.

5 (5) As part of the application for a permit to operate as a
6 microenterprise home kitchen operation, an applicant must submit a
7 written standard operating plan to the department that includes but
8 is not limited to the following information:

9 (a) A menu stating the foods to be offered;

10 (b) All food types or products that will be handled;

11 (c) The proposed procedures and methods of food preparation and
12 handling;

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

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

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

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

23 (h) A description of packaging for food;

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

26 (j) Cooking temperatures and how temperatures for cooked foods
27 will be measured;

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

31 (l) A description of adequate refrigeration capacity as
32 appropriate to the menu;

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

37 (n) If the microenterprise home kitchen operation is in a rental
38 property, attestation that operating a business does not violate the
39 rental agreement.

1 (6) A permit may, as appropriate, require additional
2 refrigeration capacity that is available and readily installable for
3 home consumers.

4 (7) A microenterprise home kitchen operation permitted under this
5 section must include a signed document attesting, by opting to become
6 permitted, that the operator of the permitted microenterprise home
7 kitchen operation understands that the department will seek to enter
8 the permitted area of the domestic residence housing the
9 microenterprise home kitchen operation for the purposes of
10 inspections pursuant to section 5 of this act. After the department
11 presents official credentials and provides notice of the purpose of,
12 and intent to conduct, an inspection, the permit holder shall allow
13 the department to determine if the microenterprise home kitchen
14 operation is in compliance with this chapter by allowing access to
15 the establishment, allowing inspection, and providing information and
16 records specified in this chapter and to which the department is
17 entitled according to law, during the microenterprise home kitchen
18 operation's hours of operation and other reasonable times. Absent a
19 search warrant, the health inspector may not enter a home when only
20 minors are present.

21 (8) For purposes of permitting, the permitted area includes the
22 home kitchen, food storage, utensils and equipment, toilet room,
23 janitorial or cleaning facilities, outdoor cooking facilities, and
24 refuse storage area. Food operations may not be conducted outside of
25 the permitted areas.

26 (9) The department shall issue a permit after conducting an
27 initial inspection and reviewing and conducting a risk-based
28 assessment of the microenterprise home kitchen operation's operating
29 plan and determining that the proposed microenterprise home kitchen
30 operation and its method of operation comply with the requirements of
31 this chapter.

32 (10) After issuing a permit, the department shall make the name,
33 contact information, and location, together with inspection results,
34 of the microenterprise home kitchen operation publicly accessible.

35 (11) In addition to the provision of any information required by
36 the department on forms developed under subsection (1) of this
37 section, an applicant for a permit or a permit renewal as a
38 microenterprise home kitchen operation must also provide
39 documentation that all individuals to be involved in the preparation

1 of microenterprise home kitchen operation foods have secured a food
2 and beverage service worker's permit under chapter 69.06 RCW.

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

6 (13) The permit, or an accurate copy thereof, must be retained by
7 the operation on-site and displayed at all times the microenterprise
8 home kitchen operation is in operation.

9 NEW SECTION. **Sec. 5.** (1) The permitted area of a
10 microenterprise home kitchen operation must be inspected for basic
11 hygiene by the department before initial permitting under section 4
12 of this act and may, at the discretion of the department, be
13 inspected up to twice per year after initial permitting only when the
14 permit holder is present. The permit holder shall make themselves
15 available for routine inspection or in response to a foodborne
16 outbreak or other public health emergency. The authority of the
17 department to inspect a microenterprise home kitchen operation
18 includes the authority to inspect any records required to be kept
19 under the provisions of this chapter. For any inspection, the
20 department shall document the reason for the inspection, shall
21 maintain such documentation on file with the microenterprise home
22 kitchen operation's permit, and shall provide the reason for the
23 inspection in writing to the permit holder of the microenterprise
24 home kitchen operation. The inspector's access is limited to the
25 permitted area.

26 (2) When the department conducts a basic hygiene inspection, the
27 department shall, at a minimum, inspect for the following:

28 (a) That the permitted microenterprise home kitchen operation
29 understands that no person other than the permittee, or a person
30 under the direct supervision of the permittee, may be engaged in the
31 processing, preparing, packaging, or handling of any microenterprise
32 home kitchen operation food products or be in the home kitchen during
33 the preparation, packaging, or handling of any microenterprise home
34 kitchen operation food products;

35 (b) That no microenterprise home kitchen operation food
36 preparation, packaging, or handling is occurring in the
37 microenterprise home kitchen operation concurrent with any other
38 domestic activities such as family meal preparation, dishwashing,
39 clothes washing or ironing, kitchen cleaning, or guest entertainment,

1 except that this subsection (2)(b) may not be construed so as to
2 prohibit a microenterprise home kitchen operation from offering
3 cooking classes within the home kitchen;

4 (c) That no infants, small children, or pets are in the permitted
5 area of the microenterprise home kitchen operation during the
6 preparation, packaging, or handling of any microenterprise home
7 kitchen operation food products;

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

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

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

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

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

20 (iii) Wash their hands before any food preparation and food
21 packaging activities; and

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

25 (3) Nonemergency inspections may occur only during the normal
26 business hours when the permit holder is present and with reasonable
27 advance notice, by appointment, or pursuant to a search warrant.
28 Under ordinary circumstances, advance notice provided at least two
29 business days prior is considered reasonable for purposes of this
30 section.

31 (4) If in the event the department is denied access to the
32 permitted area of a domestic residence housing a microenterprise home
33 kitchen operation where access was sought for the purposes of
34 enforcing or administering this chapter, the department may:

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

39 (b) Apply to any court of competent jurisdiction for a search
40 warrant authorizing access to the permitted area of a domestic

1 residence housing a permitted microenterprise home kitchen operation,
2 upon which the court may issue a search warrant for the purposes
3 requested.

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

8 NEW SECTION. **Sec. 6.** (1) When the department or the local
9 health jurisdiction determines that any person is engaging in a
10 microenterprise home kitchen operation without a valid permit issued
11 under section 4 of this act, the department or local health
12 jurisdiction may impose penalties consistent with violations of
13 chapter 246-215 WAC.

14 (2) When the department determines a permit holder of a
15 microenterprise home kitchen operation is violating any provision of
16 this chapter, the department may impose penalties or conditions as
17 provided in this section.

18 (3)(a) For the first violation within the period of the pilot
19 program, the department must hold an administrative conference with
20 the operator of the microenterprise home kitchen operation, which may
21 include, as appropriate, an offer of technical assistance.

22 (b) For the second or subsequent violation within the period of
23 the pilot program, the department may initiate one, or a combination
24 of one or more, of the following compliance methods:

25 (i) A written warning;

26 (ii) Placing the microenterprise home kitchen operation on
27 probation, which may include setting conditions for continued
28 operation of the microenterprise home kitchen operation during the
29 probation period;

30 (iii) Suspending the permit of the microenterprise home kitchen
31 operation;

32 (iv) Revoking the permit of the microenterprise home kitchen
33 operation; and

34 (v) Issuing fees to cover the cost of inspections prior to a
35 microenterprise home kitchen operation preparing food after
36 suspension or revocation.

37 NEW SECTION. **Sec. 7.** (1) If the department seeks to deny,
38 suspend, or revoke any permit provided for in this chapter, it may do

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

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

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

8 (c) Consistent with section 5 of this act, refused the department
9 access to the permitted area of a domestic residence housing a
10 microenterprise home kitchen operation for the purpose of carrying
11 out the provisions of this chapter;

12 (d) Consistent with section 5 of this act, refused the department
13 access to any records required to be kept under the provisions of
14 this chapter; or

15 (e) Exceeded the meal preparation limits provided in section 3 of
16 this act.

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

26 NEW SECTION. **Sec. 8.** Except as otherwise provided in this
27 chapter, a microenterprise home kitchen operation with a valid permit
28 under section 4 of this act is not subject to the provisions of
29 chapter 69.07 RCW or to permitting and inspection by the department
30 of agriculture.

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

33 (1) This chapter does not apply to a microenterprise home kitchen
34 operation with a valid permit under section 4 of this act.

35 (2) This section expires June 30, 2025.

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

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

5 NEW SECTION. **Sec. 11.** (1) By October 1st of each year, the
6 department must submit an annual report to the legislature and the
7 governor in compliance with RCW 43.01.036. Reports should include,
8 but are not limited to, the following:

- 9 (a) Reviewing the program adopted in this chapter;
- 10 (b) Statistics related to the number and distribution of
11 microenterprise home kitchen operations to be permitted or that are
12 permitted;
- 13 (c) Data on existing commissary, shared, or commercial kitchen
14 facilities available for rent;
- 15 (d) Any foodborne illness outbreaks associated with any
16 microenterprise home kitchen operation; and
- 17 (e) Providing recommendations for necessary legislation regarding
18 the program adopted in this chapter.

19 (2) This section expires October 30, 2025.

20 NEW SECTION. **Sec. 12.** Sections 2 through 8, 11, and 13 of this
21 act constitute a new chapter in Title 70 RCW.

22 NEW SECTION. **Sec. 13.** Except for section 11 of this act, this
23 chapter expires June 30, 2025.

24 NEW SECTION. **Sec. 14.** If specific funding for the purposes of
25 this act, referencing this act by bill or chapter number, is not
26 provided by June 30, 2021, in the omnibus appropriations act, this
27 act is null and void.

28 NEW SECTION. **Sec. 15.** The obligation of local governments to
29 comply with the requirements established in sections 2 through 8 of
30 this act is contingent on the provision of state funding to local
31 governments for the specific purpose of complying with these
32 requirements."

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NOT CONSIDERED 04/26/2021

1 On page 1, line 2 of the title, after "kitchens;" strike the
2 remainder of the title and insert "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 70 RCW; creating new sections; and providing
5 expiration dates."

EFFECT: Establishes that the Department of Health (DOH) must develop a pilot program to allow for permitting and inspection of up to 200 microenterprise home kitchen operations (MHKO). Provides that DOH may start issuing permits no later than July 1, 2022, and may issue no more than 75 permits in a single county. Removes State Board of Health rule-making authority but provides that the State Board of Health may adopt rules related to MHKOs, based on recommendations from DOH, after the pilot program concludes. Amends the definition of "microenterprise home kitchen operation" to include that an MHKO is designed to be temporary in nature and expires June 30, 2025, at which time the operation must cease to operate or transition to a food establishment that uses permitted kitchen space. Requires DOH to enter into a joint agreement with a local health jurisdiction prior to issuing permits in that county. Authorizes a local health jurisdiction to elect to administer the pilot program under certain requirements. Requires DOH to issue a permit after an initial inspection and review and risk assessment of the MHKO's operating plan. Provides that MHKOs may be limited on the number of meals or portions sold based on the capacity of the MHKO. Requires that MHKOs must follow the requirements of the current food service code unless otherwise exempted by DOH upon conducting a risk-based plan review. Requires that DOH develop a form for permit applications, operation places, and policies and procedures for MHKOs. Requires MHKO permits to be renewed annually and requires that permit renewal include a plan to transition to a permitted commissary, shared, or commercial kitchen. Requires the permit holder allow DOH access to the establishment to conduct an inspection and provide information and records to which DOH is entitled. Establishes that MHKOs may be inspected up to twice a year. Authorizes the imposition of penalties consistent with violation of the food service code if a MHKO operates without a permit. Requires DOH to report annually on October 1st until 2025 to the Legislature and the Governor. The pilot program expires June 30, 2025.

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