

SENATE BILL REPORT

E2SHB 1258

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, March 25, 2021

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: House Committee on Appropriations (originally sponsored by Representatives Frame, Peterson, Dolan, Ryu, Leavitt, Simmons, Jacobsen, Lovick, Taylor, Fitzgibbon, Fey, Ramel, Ortiz-Self, Shewmake, Johnson, J., Bateman, Eslick, Ramos, Davis, Thai, Santos, Chambers, Wylie, Callan, Wicks, Rule, Sutherland, Chase, Macri, Gregerson, Slatter, Berg and Riccelli).

Brief History: Passed House: 3/9/21, 58-38.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/23/21, 3/25/21 [DPA-WM, DNP].

Brief Summary of Amended Bill

- Requires the Department of Health (DOH) to develop a pilot program until June 30, 2025 to allow for inspection and permitting of up to 200 microenterprise home kitchen operations (MHKOs).
- Requires a MHKO to submit a permit application, together with an operating plan, to DOH and undergo an initial inspection by DOH.
- Requires a permitted MHKO to meet certain food safety requirements.
- Allows DOH to take enforcement action if a permitted MHKO violates the pilot program or to issue penalties if a MHKO operates without a permit.

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.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Rolfes and Stanford.

Minority Report: Do not pass.
Signed by Senators Warnick, Ranking Member; Honeyford and Short.

Staff: Karen Epps (786-7424)

Background: Food Service Standards. The United States Food and Drug Administration (FDA) provides guidance to state and local agencies regarding safe food service practices (Food Code). The FDA developed the Food Code in cooperation with the Centers for Disease Control and Prevention and the United States Department of Agriculture to provide current enforcement standards for safe food service practices.

The Washington State Board of Health (board) is authorized to establish minimum standards for 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, 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 Food Code when adopting rules for food service.

Summary of Amended Bill: The Department of Health (DOH) must develop a pilot program to allow for inspection and permitting of up to 200 microenterprise home kitchen operations (MHKOs). No later than July 1, 2022, DOH may begin issuing permits. "Microenterprise home kitchen operation" means a home kitchen that is operated by a person in the person's primary domestic residence where food is stored, handled, and prepared for consumers and permitted by DOH. An MHKO is designed to be temporary and expires June 30, 2025, at which time the operation must cease to operate or transition to a food establishment that uses a commissary, shared, or commercial kitchen permitted by a local health jurisdiction.

Prior to issuing permits in a county, DOH must enter into a joint agreement with a local health jurisdiction. A local health jurisdiction may elect to administer the pilot program as long as it adheres to DOH procedures, forms, and implementation guidelines. DOH may issue no more than 75 permits in a single county. MHKOs are subject to the food service code, unless otherwise exempted by DOH after DOH has conducted a risk-based analysis of the MHKO's operating plan. MHKOs are subject to additional limitations, including:

- food preparation may not involve certain processes or certain foods and food may not be held hot for more than two hours or held overnight;
- a MHKO may not sell more than 20 individual meals per day and no more than 100

- meals per week based on the capacity of the MHKO;
- the operation may not engage in indirect sales to consumers and food from an MHKO may not be delivered out of state or by a third-party delivery service;
- the MHKO must be covered by a liability insurance policy; and
- the MHKO must post inspection scores at the entry of the operation during business hours.

DOH must develop a permit and form for permit applications, a form for operating plans, and policies and procedures for the pilot program. MHKO pilot program policies and procedures must be developed in consultation with food safety and MHKO advocates. As part of the permit application, a MHKO must submit an operating plan to DOH that includes certain information, such as:

- a menu stating the foods to be offered and information related to the types of food products, and the storage, handling, cooking, and packaging of food;
- information related to cleaning of the permitted area, disposing of refuse, and plans to make sure the permitted area is used by approved food service handlers while the MHKO is preparing food; and
- information related to the days and times the home kitchen may be used for the MHKO and, if the MHKO is in a rental property, attestation that operating a business does not violate the rental agreement.

The MHKO must also provide documentation that all individuals involved in the preparation of the MHKO's foods have secured a food and beverage service worker's permit. The MHKO must include a signed document attesting that the operator will allow DOH access for inspection purposes. The permitted area includes the home kitchen, food storage, utensils and equipment, toilet room, janitorial or cleaning facilities, outdoor cooking facilities, and refuse storage area. Food operations may not be conducted outside of the permitted areas.

DOH must issue a MHKO permit after conducting an initial inspection and reviewing and conducting a risk-based assessment of the MHKO's operating plan and determining the proposed MHKO and its method of operation comply with the pilot program. After issuing a permit, DOH must make the name, contact information, and location, together with inspection results, of the MHKO publicly accessible.

The permit must be retained by the operation on-site and displayed at all times the MHKO is in operation. MHKO permits are not transferrable and must be renewed annually until the pilot program ends. Permit renewal must include a plan to transition to a permitted commissary, shared, or commercial kitchen. DOH must maintain data on existing commissary, shared, or commercial kitchen facilities available for rent. Local health jurisdictions will work to inventory, permit, and inspect commissary, shared, or commercial kitchen facilities.

The permitted area of a MHKO must be inspected for basic hygiene by DOH before a

permit can be issued and may, at the discretion of DOH, be inspected up to twice per year while the MHKO is in operation. DOH may also inspect records of the MHKO. Nonemergency inspections may only occur during normal business hours and with at least two days' notice. The permit holder must be present for routine inspections or in response to a foodborne outbreak or other public health emergency. As part of the basic hygiene inspection, DOH must, at a minimum, insure:

- the permitted MHKO understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in processing, preparing, packaging, or handling any MHKO food products, or be in the home kitchen during the preparation, packaging, or handling of any MHKO food products and all persons in the MHKO have obtained a food and beverage service worker's permit;
- no MHKO food preparation, packaging, or handling is occurring in the MHKO concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment, except that a MHKO is not prohibited from offering cooking classes within the home kitchen;
- all food-contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any MHKO food products are washed, rinsed, and sanitized before each use and all food preparation and food and equipment storage areas are maintained free of rodents and insects; and
- all persons involved in the preparation and packaging of MHKO food products are not preparing meals for sale in the home kitchen when ill with a communicable disease or condition, wash their hands before any food preparation and food packaging activities, and avoid bare-hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils.

If DOH is denied access to the permitted area of a MHKO where access was sought for enforcing or administering this chapter, DOH may issue a closure notice and apply to any court of competent jurisdiction for a search warrant authorizing access to the permitted area of the MHKO.

DOH or the local health jurisdiction may impose penalties consistent with violations of the food service code if a MHKO operates without a permit. When DOH determines a permitted MHKO is violating any provision of the pilot program, DOH must hold an administrative conference with the MHKO for the first violation within the period of the pilot program. For the second or subsequent violation within the period of the pilot program, DOH may issue a written warning, place the MHKO on probation, suspend or revoke the permit, and issue fees to cover inspection costs.

If DOH seeks to deny, suspend, or revoke a MHKO permit, DOH must conduct a hearing and determine a permittee has:

- refused, neglected, or failed to keep and maintain records or comply with the pilot program or refused, neglected, or failed any lawful order of the local health

- jurisdiction;
- refused DOH access to the permitted area or the records of the MHKO; or
- exceeded the meal preparation limits of the pilot program.

DOH may summarily suspend a permit, whether or not MHKO has been found to have committed a prior violation, if the health officer finds that a MHKO is operating under conditions that constitute an immediate danger to public health or if DOH is denied access to the permitted area or the records of the MHKO.

DOH must compile and maintain statistics related to the number and distribution of permitted MHKOs and make that information publicly accessible. At the end of the pilot program, the board may, based on DOH's recommendation, adopt rules for the authorization, operation, and regulation of MHKOs. DOH must report to the Legislature and the Governor by October 1st of each year until 2025. The pilot program expires on June 30, 2025.

EFFECT OF AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE AMENDMENT(S):

- Establishes that the Department of Health (DOH) must develop a pilot program to allow for permitting and inspection of up to 200 MHKOs.
- 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 board rule-making authority, but provides that the board may adopt rules related to MHKOs, based on recommendations from DOH, after the pilot program concludes.
- Amends the definition of MHKO to include that an MHKO is designed to be temporary 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 and allows a local health jurisdiction to elect to administer the pilot program as long as it complies with DOH requirements.
- Requires MHKOs to follow the requirements of the current food service code unless otherwise exempted by DOH upon conducting a risk-based plan review and provides that MHKOs may be limited on the number of meals or portions sold based on the capacity of the MHKO.
- Requires DOH to develop a form for permit applications, operation places, and policies and procedures for MHKOs and to issue a permit after an initial inspection and review and risk assessment of the MHKO's operating plan.
- Requires MHKO permits to be renewed annually and that permit renewal include a plan to transition to a permitted commissary, shared, or commercial kitchen.
- Requires the permit holder to allow DOH access to the establishment to conduct an inspection and provide information and records to which DOH is entitled, and 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 and sets an expiration date of June 30, 2025 for the pilot program.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill:

The committee recommended a different version of the bill than what was heard. PRO: The bill creates a pilot program for microenterprise home kitchens to prepare 20 meals per day or 100 meals a week which is about as much cooking as a large family would do in a week. The goal of this bill is to provide a pathway for folks who want to get into the food business to have a way to do so safely and legally. The bill contains exemptions to the food service code that are replaced with modified requirements that are science-based approaches to public health and food safety. This bill strikes a good balance to provide economic opportunity and safety for the public. Renting a commercial kitchen is very expensive and these costs have forced people to close their small business. This bill provides a great economic opportunity, allowing some businesses to stay small to supplement retirement. This bill can change the lives of refugees and immigrants allowing them to make ends meet by selling their food. Selling food from a home kitchen is happening without regulation currently and this bill will bring food safety to an industry not currently regulated. This bill brings people together as a community, puts people back to work, and will help people recover from the pandemic. This bill will allow entrepreneurs to save money while they solidify their meal offerings and build what could be a bigger business. This bill provides an economic opportunity for low income communities and folks who have lost work in the restaurant industry. This bill increases consumer safety because the licensing requirements and inspection criteria are vigorous. This bill will increase the use of resources from Washington farmers and help underserved individuals across the state.

CON: Public health is a crucial part of everyday life and this bill exempts certain food businesses from food safety requirements that have been established and implemented to protect public health. An emergency rule was adopted this interim to allow a restaurant with a liquor license to rent their kitchen space during nonoperating hours. There are concerns about allowing MHKOs to provide catering. This bill relaxes or suspends 22 requirements in the food service code and prevents the permitting agency from evaluating water supply and sewer systems of the MHKO which creates potential issues. Regulations such as time and temperature of foods and handwashing facility requirements are critical standards in place to promote food safety and regulate potentially hazardous foods. There

should be a term-limited pilot program under DOH that requires a risk-based analysis prior to permitting, which will help ensure MHKOs are adhering to key food safety standards.

OTHER: MHKOs are providing food to the public so they should be required to follow the food service code and be exempted as needed. The recommendation from an advisory committee in 2017 was to not allow MHKOs and focus on other solutions such as shared kitchens, creative food safety education, and public/private partnerships.

Persons Testifying: PRO: Representative Noel Frame, Prime Sponsor; Laurel Hargis; Alvin Salehi, Chef; Prashanthi Reddy, Makeda and Mingus; Will von Geldern, Ventures; Lisa Latendresse, Get Goodness; Chantel Jackson, Thyme Well Spent Catering; Sarah Schacht.

CON: Samantha Louderback, Washington Hospitality Association; Art Starry, Thurston County Health and Human Services; Kaitlyn Donahoe, Washington State Board of Health.

OTHER: Catherine Holm, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: No one.